CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 532

THE UNITED STATES OF AMERICA, PETITIONER

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 17, 1936

CERTIORARI GRANTED DECEMBER 21, 1936

SUPREME COURT OF THE UNITED STATES

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1 In United States Circuit Court of Appeals
for the Second Circuit

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT *vs.* MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, DEFENDANTS-APPELLEES

Statement under rule 13

This action was commenced by the service of the summons dated March 5, 1936, and the complaint, verified on March 5, 1936, on the defendant-appellant Morgan Belmont on March 6, 1936. The complaint was filed on March 10, 1936. A notice of appearance and demand for both defendants, dated April 3, 1936, was served upon the plaintiff's attorney and filed on April 3, 1936. The Amended Complaint was served on the defendants' attorneys on April 2, 1936, and was filed on April 3, 1936. The Second Amended Complaint was served upon the defendants' attorneys on April 23, 1936, and was filed on April 24, 1936.

On April 29, 1936, the defendants' attorneys served upon the plaintiff's attorney a notice of motion on May 5, 1936, for an
2 order dismissing the Second Amended Complaint upon the ground that it fails to state facts sufficient to constitute a cause of action against the defendants or either of them.

On May 5, 1936, the motion to dismiss the Second Amended Complaint was argued by counsel before the Honorable Murray Hulbert, United States District Judge for the Southern District of New York. On May 6, 1936, the opinion of the District Court, Dated May 5, 1936, dismissing the Second Amended Complaint, was filed. On May 6, 1936, the order and judgment dismissing the Second Amended Complaint were filed.

On May 13, 1936, this appeal was taken.

3 In United States District Court, Southern District of New York

[Title omitted.]

Summons

To the above-named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 5th day of March, A. D. 1936.

[SEAL] CHARLES WEISER, *Clerk.*

LAMAR HARDY,
U. S. Attorney, Plaintiff's Attorney,
Office and P. O. Address, U. S. Courthouse, Borough of Manhattan, New York City.

4 In United States District Court, Southern District of New York

[Title omitted.]

Notice of appearance and demand

SIR: Please take notice, that the defendants Morgan Belmont and Eleanor R. Belmont above named, hereby appear in the above entitled action and that we are retained as attorneys for them herein, and demand that a copy of all papers in this action be served on us at our office, No. 14 Wall Street, New York City, N. Y.

Dated: New York, N. Y., April 3, 1936.

Yours, etc.

CADWALADER, WICKERSHAM & TAFT,
Attorneys for the defendants, Office and Post Office Address,
No. 14 Wall Street, Borough of Manhattan, New York City.

To LAMAR HARDY, Esq.,
United States Attorney,
Plaintiff's Attorney.

5 In United States District Court, Southern District of New York

Law 63/274

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, DEFENDANTS

Second amended complaint

The plaintiff, United States of America, by its attorney, Lamar Hardy, United States Attorney for the Southern District of New York, for its second amended complaint herein, alleges on information and belief:

I

The United States of America, hereinafter called the plaintiff, is a corporation sovereign and body politic.

II

Morgan Belmont and Eleanor R. Belmont, the executors of the last will and testament of August Belmont, deceased, hereinafter called the defendants, are residents of the State of New York and of the Southern District of New York.

6

III

Kompania Petrogradskago Metallicheskago Zavoda, sometimes styled in the German language "Petrograder Metal Fabrik" and sometimes styled in the English language "Petrograd Metal Works", hereinafter called the Metal Company, was in 1916 and prior to 1918 a corporation organized and existing under the laws of Russia with a fixed capital in 1916 in excess of 1,000,000 rubles, which conducted and to which belonged a metallurgical and metal manufacturing business enterprise in Russia.

IV

Prior to 1918 and up to the date of his death, on or about December 10, 1924, August Belmont was a general partner in a partnership conducting a private banking and investment business in the City of New York under the firm name and style of August Belmont & Co., hereinafter called the Belmont firm.

V

Prior to 1918, the Metal Company had on deposit with the Belmont firm certain sums of money which remained on deposit with the Belmont firm thereafter and the amount of such sums on deposit on December 10, 1924, was $25,438.48, for the repayment of which no demand had been made prior to that date. The defendants' testator was jointly liable together with the other partners of the Belmont firm for the repayment of these sums.

7

VI

In 1918 or thereabouts, duly enacted laws, decrees, enactments, and orders of the Russian State, including the decree of June 28, 1918, on the nationalization of the largest industrial enterprises, a certified photostatic copy of which is annexed hereto, marked Exhibit 1 and made a part hereof as if set forth in full herein, and a certified copy of a translation of which is annexed hereto, marked Exhibit 2 and made a part hereof as if set forth in full herein, dissolved, terminated, and liquidated certain Russian corporations and organizations and by said duly enacted laws, decrees, enactments, and orders the Russian State nationalized and appropriated all of the assets of such corporations and organizations.

VII

The Metal Company which, prior to 1918, as hereinbefore alleged, was a corporation organized and existing under the laws of the State of Russia, with a fixed capital in 1916 in excess of 1,000,000 roubles, by said duly enacted laws, decrees, enactments, and orders of the Russian State, including the said decree of June 28, 1918, alleged in Paragraph VI of this second amended complaint, was dissolved, terminated, and liquidated, and all of its property and assets of every kind and wherever situated, including the aforesaid cash deposit account with the Belmont firm in New York were nationalized and appropriated by the Russian State. The said duly enacted laws, decrees, enactments, and orders of the Russian State, including
8 the said decree of June 28, 1918, did not provide for payment of the claims of creditors of the Metal Company, except for the payment of salaries and wages to employees of the Metal Company, and did not provide for payment of compensation to the stockholders of the Metal Company upon the nationalization and appropriation of all of its property and assets.

VIII

As a result of said duly enacted laws, decrees, enactments, and orders of the Russian State, the cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm became the property of the Russian State, and remained the property of the Russian State at all times up to November 16, 1933.

IX

After the death of the aforesaid August Belmont, and on or about December 29, 1924, the Surrogate's Court of Nassau County issued letters testamentary to Morgan Belmont and Eleanor R. Belmont, the defendants herein, as executors of the last will and testament of August Belmont, deceased. Said defendants duly entered upon the performance of their duties as such executors, and have continued in the performance of such duties up to the present time.

X

On or about November 16, 1933, by an executive agreement contained in an exchange of diplomatic correspondence, a copy of which is annexed hereto as Exhibit 3 and made a part hereof as if set
9 forth in full herein, the Union of Soviet Socialist Republics released and assigned to the plaintiff herein all amounts admitted to be due or that may be found to be due to the Union of Soviet Socialist Republics from American nationals. The said executive agreement released and assigned to the plaintiff the aforementioned cash deposit account formerly standing to the credit of

the Metal Company with the Belmont firm and since November 16, 1933, the plaintiff has been and now is the sole and exclusive owner entitled to immediate possession of the aforesaid cash deposit account. A letter from the Attorney General of the United States, dated September 17, 1934, to the Secretary of State, a reply thereto by the Secretary of State, and a letter from the Acting Secretary of State to the Attorney General, dated October 27, 1934, all of which are annexed as Exhibits 4, 5, and 6, and made a part hereof as if set forth in full herein, disclose the purpose of the executive agreement and assignment of November 16, 1933, to assign and release to the plaintiff all amounts and assets in the United States, admitted to be due or that may be found to be due to the Union of Soviet Socialist Republics from American nationals, including the aforesaid cash deposit account formerly standing to the credit of the Metal Company with the Belmont firm.

XI

On or about June 18, 1935, the plaintiff demanded from the defendants the payment to the plaintiff of the sum of $25,438.48, formerly standing to the credit of the Metal Company with the Belmont firm. The defendants have failed to comply with this demand up to the present time.

Wherefore, the plaintiff demands judgment against the defendants herein for the sum of $25,438.48, with interest at 6% from June 18, 1935 to the date of judgment, together with the costs and disbursements of this action.

LAMAR HARDY,
United States Attorney, Southern District of New York, Attorney for Plaintiff, Office & P. O. Address, United States Court House, Foley Square, Borough of Manhattan, City of New York.

[*Duly sworn to by Edward J. Ennis; jurat omitted in printing.*]

[Certification of Exhibits 1 and 2 annexed to second amended complaint

No. 1857

United States of America

[SEAL]

Department of State

To all to whom these presents shall come, Greeting:

I certify that the document hereunto annexed is a translation of the attached text of a "decree of the Soviet of People's Commissars

of the Russian Socialist Federated Soviet Republic", dated June 28. (15) 1918, printed on pages 226, 227, 228, 229, and 230 of a Russian-language publication in the possession of the Department of State, entitled in translation, "Collection of Decrees and Orders on National Economy (October 25, 1917–October 25, 1918)" published in Moscow in 1918, together with a translation of the title page thereof.

In testimony whereof, I, Cordell Hull, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, in the District of Columbia, this twentieth day of April, 1936.

[For the contents of the annexed document the Department assumes no responsibility.]

[SEAL]

(Sgd.) CORDELL HULL,
Secretary of State.

(Sgd.) By CLINTON MACEACHRAN,
Chief Clerk.

13 *Exhibit 1 annexed to complaint*

Certified copy of Russian text of a decree of the Russian State of June 28, 1918, annexed as Exhibit 1 to Second Amended Complaint and not printed by consent.

Exhibit 2 printed herein is a certified translation of Exhibit 1.

Exhibit 2 annexed to second amended complaint

Collection of Decrees and Orders on National Economy

October 25, 1917—October 25, 1918

Edited by the Juridical Section of the Supreme Soviet of National Economy.

* * * * * * *

Publication of the Supreme Soviet of National Economy, Moscow, 1918.

Source: Sbornik Dektretov i Postanovlenii Po Narodnomu Khozyaistvu (Collection of Decrees and Orders on National Economy) October 25, 1917—October 25, 1918. Publication of the Supreme Soviet of National Economy. Moscow, 1918. Pages 226–230. Translation.

14 168. Decree of the Soviet of People's Commissars

Regarding the nationalization of the largest mining, metallurgical and metalworking, textile, electro-technical, wood sawing, and wood-

working, tobacco, glass, ceramic, leather, and cement industries, together with other branches of industry, steam mills, local public utilities, and enterprises connected with railway transport.

For the purpose of a determined struggle against chaos-economic and in the supplying of foods—and in order to consolidate the dictatorship of the working class and the rural poor, the Soviet of People's Commissars has decreed the following:

I. The industrial and commercial enterprises enumerated below, which are located within the borders of the Soviet Republic, together with all their capital and property regardless of what the latter may consist, are declared the property of the Russian Socialist Federated Soviet Republic:

Mining Industry

(1) All enterprises belonging to corporations and limited partnerships which mine mineral fuel (bituminous and brown coal, lignite, shale, anthracite, etc.);

(2) All enterprises belonging to corporations and limited partnerships mining iron and copper ores.

(3) All enterprises engaged in mining platinum.

(4) All tungsten mining enterprises.

15 (5) All enterprises engaged in the mining of silver, lead, and zinc.

(6) All enterprises of the asbestos industry.

(7) The gold mining enterprises enumerated below:

(a) The Lena Gold Mining Company,

(b) The Kochkarski Gold Field Corporation and all enterprises of the Kochkarski system,

(c) The Upper-Amur Gold Mining Company,

(d) The Amur Gold Mining Company,

(e) The Russian Gold Mining Company;

(f) The Fedorovskoe Gold Mining Company,

(g) The Southern Siberian Gold Mining Company,

(h) The Amgunskaya Gold Mining Company,

(i) The Miasskoe Gold Mining Partnership,

(j) The Southern Altai Gold Mining Concern,

(k) The Olkhovskie Gold Mines Corporation,

(l) The "Altai" Gold Mining Corporation,

(m) The Lower-Selenginskoe Partnership,

(n) The Tsimanskaya Gold Mining Company,

(o) The Company of the Marinskie Gold Fields,

(p) The Partnership "Eltsov and Levashev",

(q) The Corporation "Draga",

(r) The Okhotskoe Gold Mining Partnership,

(s) The Aidyrly-Kvarkenski Gold Field Raion,

16 (t) The Moscow Timber Partnership (Severo-Zaozerskaya Dacha),

(u) The Zauralskoe Mining Partnership;

(8) The enterprises, enumerated below, which mine salt:
(a) The Company of the Kulinskoe Salt Production (Lake Kuli),
(b) The Mines in the Molla Kar; Ter-Avanesov region,
(c) All the Usolskie Salt Mines;

Metallurgical and Metal Working Industry.

(9) All enterprises belonging to corporations and limited partnerships with a fixed capital of one million or more roubles, as well as all large enterprises, the total value of whose property according to the last balance sheet was one million or more roubles, and which are engaged in one or several of the following kinds of production: smelting of cast iron, iron and copper in the crude state; the obtaining therefrom of semi-worked products and the working of these semi-worked products by rolling, drawing, pressing and chemical treatment; the construction of machines of all types (engines, machine tools, agricultural machines, etc.), aviation apparatus and mechanical equipment; the construction of vessels, locomotives and cars, bridges and iron constructions; the making of instruments of precision; the making of fire-arms, machine guns, artillery and parts belonging thereto, the production of metal armature; the production of various kinds of metal-ware with the exception of air brakes;

17 (10) Furthermore, notwithstanding the extent of basic capital, all enterprises which produce any kind of metal-ware, constituting the sole production of wares worked from metal within the borders of the Russian Republic, are declared to be the property of the Republic;

Textile Industry.

(11) All enterprises belonging to corporations and limited partnerships which work cotton and which have a fixed capital of not less than one million roubles;

(12) All enterprises belonging to corporations and limited partnerships which work wool, flax, silk, and jute, as well as dressing-dyeing concerns, with a fixed capital of not less than five hundred thousand roubles;

(13) All enterprises belonging to corporations and limited partnerships which work hemp and which possess a fixed capital of not less than two hundred thousand roubles;

Electro-Technical Industry

(14) All electrical stations belonging to corporations and limited partnerships which produce electric power for sale with a fixed capital of not less than one million roubles;

(15) All electrical plants belonging to corporations and limited partnerships which produce dynamos, electrical motors, transformers, electrical meters, and other articles of the electro-

18

technical industry, with a fixed capital of not less than one million roubles;

(16) All cable plants belonging to corporations and limited partnerships with a fixed capital of not less than one million roubles;

Wood Sawing and Wood Working Industry

(17) All enterprises of the wood sawing industry belonging to corporations and limited partnerships with a fixed capital of not less than one million roubles;

(18) All enterprises, mechanically equipped, of the wood working industry which belong to corporations and limited partnerships;

Tobacco Industry

(19) All enterprises belonging to corporations and limited partnerships which have tobacco factories with a fixed capital of not less than five hundred thousand roubles according to 1914 statistics or which have factories making an inferior grade (makhorochny) of tobacco with a fixed capital of not less than three hundred thousand roubles according to 1914 statistics;

Rubber Industry

(20) All enterprises of the rubber industry;

Glass and Ceramic Industry

(21) All enterprises belonging to corporations and limited
19 partnerships which own glass, crystal, plate glass, porcelain, faience, china, bottle and laboratory glass, pottery, tile, ceramic, majolica, and terrá-cotta plants, with a fixed capital of not less than five hundred thousand roubles according to statistics of 1914;

Leather Industry

(22) All enterprises belonging to corporations and limited partnerships which own shoe and leather factories with a fixed capital of not less than five hundred thousand roubles according to statistics of 1914;

Cement Industry

(23) All enterprises belonging to corporations and limited partnerships which own cement plants with a normal productive capacity of not less than five hundred thousand barrels per year;

Steam Mills

(24) All mills with steam power belonging to corporations and limited partnerships which have a fixed capital of not less than five hundred thousand roubles;

Public Utility Enterprises

(25) All enterprises on the territory of the Republic furnishing water supplies, all gas plants, tramways, horse railways and enterprises having to do with sewerage, shall pass into the ownership of the Soviets of Workers' and Peasants' Deputies;

20 Railway Transport

(26) All enterprises of private railway companies and branch lines which are being exploited or constructed;

Other Branches of Industry

(27) All enterprises belonging to corporations and limited partnerships which work up cellulose and wood pulp;

(28) All enterprises belonging to corporations and limited partnerships which own writing paper, carton, cardboard, cigarette paper and cigarette paper-holder factories with a fixed capital of not less than three hundred thousand roubles according to statistics of 1914;

(29) All enterprises belonging to corporations and limited partnerships which own artificial fat, soap, and stearin factories and plants with a fixed capital of not less than one million roubles according to statistics of 1914; fat melting works and oil mills (vegetable oils) with a fixed capital of not less than five hundred thousand roubles according to statistics of 1914;

(30) All enterprises belonging to corporations and limited partnerships which own the following kinds of factories: 1) mineral acids; 2) calcium and carbides; 3) artificial coal, with a fixed capital of not less than five hundred thousand roubles according to statistics of 1914;

(31) All enterprises of the Petrograd Corporation for the Calcinating of Bones;

21 (32) The following enterprises: (1) Corporation for the Manufacture and Sale of Gun Powder (Vinner's); (2) Russian Company for the Manufacture and Sale of Gun Powder (Shlisselburg's); (3) Baranovski's Gunpowder Plants Corporation.

Note.—Unless there is a proviso to the contrary, the calculation of the fixed capital of corporations and limited partnerships shall be made on the basis of data covering the fiscal year 1916 or the last accounting period the end of which preceded 1916. In the event of the establishment of an enterprise after 1916, the calculation shall be made according to the last data of the year of the approval of the charter of such enterprise.

II. The organization of the administration of nationalized enterprises shall be worked out and put into operation by the appropriate sections of the Supreme Soviet of National Economy, subject to the observance of all decrees previously issued in the premises and under

the general direction of the Presidium of the Supreme Soviet of National Economy.

With respect to enterprises mentioned in Article 24, Part I, of this decree (steam mills) the above-mentioned task falls upon the People's Commissariat for Supplies, on condition that all decrees previously issued on the subject of the administration of nationalized enterprises shall be observed.

With respect to enterprises mentioned in Article 25, Part 1 of this decree (public utility enterprises) the same task falls upon
22 the local Soviets of Workers' and Peasants' Deputies, under the same conditions as stated above.

With respect to enterprises mentioned in Article 26, Part I, of this decree (railroad enterprises and branch lines), a similar task falls upon the Commissariat for Means of Communication subject to the final approval of the Soviet of People's Commissars.

III. Until the enactment of a special order of the Supreme Soviet of National Economy with respect to each separate enterprise, the enterprises, declared to be the property of the Russian Socialist Federated Soviet Republic in accordance with the present decree, are recognized as being in the use of former owners without payment of rent; the management and former owners shall finance them on the same basis as formerly and shall receive profits from them as before.

IV. From the moment of the proclamation of the decree, members of the management, directors and other responsible administrators of the nationalized enterprises shall be answerable to the Soviet Republic not only for the intactness and preservation of the enterprise but also for its proper functioning.

In the event of the forsaking of positions without the consent of the appropriate organs of the Supreme Soviet of National Economy or in the event of unjustifiable negligence in the operation of the affairs of the enterprise, guilty persons shall be answerable to the Republic with all their property and shall also be subject to heavy criminal accountability before the courts of the Republic.

23 V. The entire personnel, administrative, technical and labouring, without exception, as well as the directors, members of the management and responsible administrators are declared to be in the service of the Russian Socialist Federated Soviet Republic and shall receive their salaries from the income and circulating resources of the enterprise at the same rate which existed up to the time of the nationalization of the enterprises.

In the event that persons of the technical and administrative personnel forsake their positions in nationalized enterprises, they shall be answerable to a revolutionary tribunal in accordance with all the severity of the laws.

VI. personal funds belonging to members of the management, stockholders, and owners of nationalized enterprises shall be sequestrated until the settlement of the question of the relationship of these funds to the circulating capital and the resources of the enterprise.

VII. All managements of nationalized enterprises shall be obliged to draw up, as soon as possible, a balance sheet as of July 1, 1918.

VIII. The Supreme Soviet of National Economy shall, as soon as possible, draw up and transmit to all nationalized enterprises, a detailed instruction regarding the organization of their management and the tasks of the worker's organizations with respect to carrying out this decree.*

IX. Enterprises belonging to consumer co-operative societies, associations, and their unions are not subject to become the property of the Republic.

24 X. This decree shall enter into effect on the day of its signature.

Signatures: The Chairman of the Soviet of People's Commissars, V. Ulyanov (Lenin). People's Commissars: Tsyurupa. Nogin, Rykov. Director of Affairs of the Soviet of People's Commissars, V. Bonch-Bruevich.

June 28 (15), 1918.

Published in "Izvestiya" of the All-Russian Central Executive Committee of Soviets, No. 134, dated June 30 (17), 1918.

Translator's note.—I hereby certify that the above translation is conformable with the attached original to the best of my knowledge.

(Sgd.) IGNATIUS JAWNEY,
Principal Translator, Department of State.
Appointed Translator January 1928.

25 *Exhibit 3 annexed to second amended complaint*

(Copied from photostat certified by Department of State, on file in office of the United States Attorney.)

WASHINGTON, *November 16, 1933.*

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics

*See below, Article 170.

to be duly notified in each case of any amount realized by
26 the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

"(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interest therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

"(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

I am, my dear Mr. President,

Very sincerely yours,

MAXIM M. LITVINOV,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.

MR. FRANKLIN D. ROOSEVELT,
President of the United States of America,
The White House.

27 (Copied from photostat certified by Department of State, on file in office of the United States Attorney.)

THE WHITE HOUSE,
Washington, November 16, 1933.

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of the their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer
28 Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

"(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or

"(b) acts done or settlements made by or with the Government of the United States or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of
29 Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. Maxim M. Litvinov,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.

Exhibit 4 annexed to second amended complaint

(Copied from photostat certified by the Department of Justice, and on file in the office of the United States Attorney.)

235511 FAB:DC
P. A. S.

SEPTEMBER 17, 1934.

THE HONORABLE, THE SECRETARY OF STATE, WASHINGTON, D. C.

MY DEAR MR. SECRETARY: I have the honor to refer to your letter of December 6, 1933, with which you enclosed a copy of a letter which you were addressing to the Acting Secretary of the
30 Treasury in respect of certain claims assigned to the United States by the Union of Soviet Socialist Republics on the occasion of their recognition by the United States.

It is my understanding that the assignment in question, dated November 16, 1933, releases and assigns to the United States not only amounts either due or which may be found to be due from American Nationals, to which amounts the Soviet Government was entitled, as a successor to prior Russian Governments, but also all amounts either due or which may be found to be due from American Nationals to Russian Nationals, including insurance, banking, railroad, manufacturing, and other corporations and business enter-

prises whose assets, both tangible and intangible, have been nationalized by the Soviet Government and have passed to that government by operation of Soviet law.

There are now pending several cases which the United States has instituted where the question of the interpretation of the so-called Litvinoff assignment may be raised. I entertain no doubt as to the correctness of my interpretation, but in order to dispose of any possible doubt which might occur to the judge before whom any of these cases may be tried, I request that you advise me of your interpretation of the assignment in question.

Very truly yours,

[SEAL] (Signed) HOMER CUMMINGS,
Attorney General.

31 *Exhibit 5 annexed to second amended complaint*

(Copied from photostat certified by the Department of Justice, and on file in the office of the United States Attorney.)

DEPARTMENT OF STATE,
Washington.

In reply refer to Le.

MY DEAR MR. ATTORNEY GENERAL: I am in receipt today of your letter of September 17, 1934, regarding the scope of the assignment made to the United States by the Soviet Government in the exchange of notes between this Government and the Soviet Government on November 16, 1933.

It was the purpose of the assignment in question to release and assign to the United States not only all amounts to which the Soviet Government was entitled as the successor to former Governments of Russia, but also all amounts to which the Soviet Government considered it was entitled in any manner.

Sincerely yours,

CORDELL HULL.

The Honorable
HOMER S. CUMMINGS,
Attorney General.

32 *Exhibit 6 annexed to second amended complaint*

(Copied from photostat certified by the Department of Justice and on file in the office of the United States Attorney.)

DEPARTMENT OF STATE,
Washington.

OCTOBER 27, 1934.

In reply refer to
Le 411.61 Assignments/6

MY DEAR MR. ATTORNEY GENERAL: Referring to your recent inquiry regarding the scope of the assignment effected by the notes

exchanged by this Government and the Soviet Government on November 16, 1935, I submit the following reply:

(1) It will be seen from the notes that the Government of the Union of Soviet Socialist Republics agreed that it would "not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals", etc., and assigned all such amounts to the Government of the United States.

(2) The only assets specifically assigned by the exchange of notes were those claimed by the Russian Volunteer Fleet. When the notes were exchanged, it was not definitely known what assets in the United States might properly be regarded as belonging to the Soviet Government. The notes were intended to cover whatever assets that Government possessed or was entitled to recover in the United States.

Sincerely yours,

WILLIAM PHILLIPS,
Acting Secretary.

33 In United States District Court, Southern District of New York

Notice of Motion to Dismiss Second Amended Complaint

[Title omitted]

SIR: Please take notice that the defendants, Morgan Belmont and Eleanor R. Belmont, as Executors of the Last Will and Testament of August Belmont, deceased, will move this Court at a stated term for motions thereof, to be held at the Federal Court House, Foley Square, New York City, on Tuesday, May 5, 1936, at 10:30 A. M., or as soon thereafter as counsel can be heard, for an order dismissing the Second Amended Complaint herein upon the ground that said Second Amended Complaint fails to state facts sufficient to constitute a cause of action against them, or either of them, and for such other, further and different relief to which the Defendants may be entitled.

34 Dated: New York, N. Y., April 29, 1936.

Yours, etc.,

CADWALADER, WICKERSHAM & TAFT,
Attorneys for the Defendants, Office and Post Office Address, No. 14 Wall Street, Borough of Manhattan, City of New York.
United States Attorney,
Federal Court House, Foley Square, City of New York.

35 #536

In United States District Court, Southern District of New York

L 63 Page 274

UNITED STATES OF AMERICA, DEFENDANTS

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, PLAINTIFF

HULBERT, D. J. Lamar Hardy, Esq., United States Attorney. Edward J. Ennis, Esq., (*Of Counsel*). Cadwalader, Wickersham & Taft, Esqs., 14 Wall Street, New York City, Attorneys for Defendants. Cornelius W. Wickersham, Esq., (Of Counsel). Daniel E. Woodhull, Jr., Esq., (Of Counsel).

Opinion

The United States sues to recover the sum of $25,438.48 with
36 interest at six percent (6%) from June 18, 1935, the date when demand for the payment of said sum was made on defendant executors.

Kompania Petrogradskago Metallicheskago Zavoda (Petrograd Metal Works) was, prior to 1918, a corporation organized and existing under the laws of Russia where it conducted a metallurgical and metal manufacturing business. It had a deposit with August Belmont & Co., under which firm name and style August Belmont carried on a private banking business in the Borough of Manhattan, City of New York, until his death on December 10th, 1924.

On December 29th, 1924, the Surrogate's Court of Nassau County issued Letters testamentary to the defendants upon the probate of the will of their testator and they have ever since been in the possession of said fund.

In 1918, the Russian State, pursuant to duly enacted laws, decreed the dissolution, termination and liquidation of certain Russian corporations, including the Petrograd Metal Works, and nationalized and appropriated the assets thereof.

It is the contention of the plaintiff that said sum on deposit with August Belmont & Co., became and remained the property of the Russian State up to November 16th, 1933, at which time by an executive agreement contained in an exchange of diplomatic correspondence between the President of the United States and M. M. Litvinoff, People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, the latter released and assigned to the plaintiff

all amounts admitted to be due, or found due, to the Union of
37 Soviet Socialist Republics from American nationals, including said cash deposit of $25,438.48.

The motion by the defendants to dismiss the complaint for failure to state facts sufficient to constitute a cause of action directly puts in issue:

1. Whether the so-called Litvinoff assignment actually transferred to the United States title to the property in question, and

2. Whether the attempt to enforce and give extraterritorial effect to Soviet decrees purporting to confiscate, nationalize, and appropriate private property located in the State of New York will be considered in accordance with public policy since the Court of Appeals of this State has declared otherwise as recently as February 27, 1934. (Vladikavkazsky Ry. Co. v. N. Y. Trust Co., 263 N. Y. 369, 378.)

The decision of this Court in the case of United States v. Bank of New York & Trust Company, 10 Fed. Supp. 269 (affirmed on appeal by a divided court, 77 Fed. (2) 866, and by a unanimous court, 296 U. S. 463), controls the disposititon of this motion.

Since the Circuit Court of Appeals, however, dealt with the question of jurisdiction as between the New York State Court and this court and the Supreme Court intimated no opinion on the merits, the motion will be granted to expedite an appeal so than an early review of the questions not passed upon in the case of United States v. Bank of New York & Trust Co. supra, may be had.

Dated: May 5, 1936.

(Signed) HULBERT,
U. S. D. J.

38 In United States District Court

[Title omitted.]

Order for judgment May 5, 1936

This cause having come on to be heard on May 5, 1936 on the motion of the defendants for an order dismissing the Second Amended Complaint herein upon the ground that the said Second Amended Complaint fails to state facts sufficient to constitute a cause of action against them or either of them, and Cadwalader, Wickersham & Taft, Esqs., attorneys for the defendants, Cornelius W. Wickersham, Esq., of counsel, having appeared in support
39 of the motion and Lamar Hardy, United States Attorney for the Southern District of New York, Edward J. Ennis, Assistant United States Attorney, of counsel, having appeared in opposition to the motion;

Now on motion of Cadwalader, Wickersham & Taft, Esqs., attorneys for the defendants, it is

Ordered and adjudged that the defendants' motion to dismiss the Second Amended Complaint be and hereby is granted; and it is

Further ordered and adjudged that the Second Amended Complaint be, and hereby is, dismissed for failure to state facts sufficient to constitute a cause of action against the defendants or either of them; and it is

Further ordered and adjudged that judgment be entered dismissing the Second Amended complaint.

HULBERT,
U. S. D. J.

40 In United States District Court, Southern District of New York

L 63 Page 274

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, DEFENDANTS

Judgment

This cause having come on to be heard on May 5, 1936, on the motion of the defendants for an order dismissing the Second Amended Complaint herein upon the ground that the said Second Amended Complaint fails to state facts sufficient to constitute a cause of action against them or either of them, and Cadwalader, Wickersham & Taft, Esqs., attorneys for the defendants, Cornelius W. Wickersham, Esq., of counsel, having appeared in support of the motion and Lamar Hardy, United States Attorney for the Southern District of New York, Edward J. Ennis, Assistant United States Attorney, of counsel, having appeared in opposition to the motion, and the order of this Court dismissing the Second Amended Complaint, dated May 5th, 1936, having been entered herein on May 5th, 1936;

Now on motion of Cadwalader, Wickersham & Taft, Esqs., attorneys for the defendants, it is

Ordered and adjudged that the Second Amended Complaint be and the same hereby is dismissed.

Dated: New York, N. Y., May 6th, 1936.

CHARLES WEISER,
Clerk.

41 In United States District Court, Southern District of New York

[Title omitted.]

Petition and order allowing appeal

The plaintiff, United States of America, by Lamar Hardy, United States Attorney for the Southern District of New York, considering

itself aggrieved by the order and judgment of this Court dated, filed, and entered herein on the 6th day of May 1936, does hereby appeal from the said order and judgment to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the Assignment of Errors filed herewith and prays that this appeal be allowed, that a citation be issued, directed to the above-named defendants, commanding them to appear before the United States Circuit Court of Appeals for the Second Circuit to do and receive what may be just in the premises, and that a transcript of the record, proceedings, and papers upon which the said order and judgment were made, duly authenticated, be
42 sent to the United States Circuit Court of Appeals for the Second Circuit.

LAMAR HARDY,
United States Attorney for the Southern District of New York, Attorney for Plaintiff, Office & P. O. Address, U. S. Court House, Foley Sq., Borough of Manhattan, City of New York.

It is hereby ordered that the appeal prayed for by the plaintiff, United States of America, be and hereby is allowed.

Dated: New York, N. Y., May 12, 1936.

HULBERT,
U. S. D. J.

43 In United States District Court, Southern District of New York

[Title omitted.]

Assignment of errors

The plaintiff, United States of America, presents and files the following assignments of errors upon which it will rely on its appeal from the order and judgment dated, filed, and entered herein on May 6, 1936:

1. The Court erred in granting the motion of the defendants to dismiss the Second Amended Complaint for failure to state facts sufficient to constitute a cause of action against the defendants or either of them.

2. The Court erred in holding that the executive agreement contained in the exchange of diplomatic correspondence between the President of the United States and the People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, dated November 16, 1933, did not assign and transfer to the plaintiff all of the right, title, and interest of the Union of Soviet Socialist Republics or of the former Petrograd Metal Works or its creditors and stockholders, in and to the bank deposit with August Belmont & Company, as alleged in the Second Amended Complaint.

44 3. The court erred in holding that enforcement of the enactments of the Russian State dissolving the said former Petrograd Metal Works and nationalizing and appropriating all of its property, including the said bank deposit, as alleged in the Second Amended Complaint, is contrary to the public policy of the United States.

4. The Court erred in holding that the said enactments of the Russian State were ineffective to reach property of the said former Petrograd Metal Works in the United States.

5. The Court erred in holding that diplomatic recognition of the Government of the Union of Soviet Socialist Republics by the Government of the United States did not require the Courts of the United States to give full force and effect to the said enactments of the Russian State.

6. The Court erred in holding that by the said enactments the Russian State did not become the liquidator of the said former Petrograd Metal Works and of all of its assets, including the said bank deposit.

Wherefore, the plaintiff prays that the said order and judgment, dated, filed, and entered herein on May 6, 1936, be reversed, and that this cause be remanded to the District Court for further proceedings herein.

Dated, New York, N. Y., May 12, 1936.

LAMAR HARDY,
United States Attorney for the Southern District of New York, Attorney for Plaintiff.
Office & P. O. Address, United States Court House, Foley Square, Borough of Manhattan, City of New York.

45 [Citation in usual form omitted in printing.]

46 In United States District Court, Southern District of New York

[Title omitted.]

Stipulation as to record

It is hereby stipulated that the foregoing is a true transcript of the record of the District Court in this action as agreed by the parties.

Dated: May 29, 1936.

LAMAR HARDY,
United States Attorney, Attorney for Plaintiff.
CADWALADER, WICKERSHAM & TAFT,
Attorney for Defendants.

47 [Clerk's certificate to foregoing transcript omitted in printing.]

48 In United States Circuit Court of Appeals for the Second Circuit

No. 461—October Term, 1935

Argued June 16, 1936. Decided Aug. 10, 1936

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED, DEFENDANTS-APPELLEES

Appeal from the District Court of the United States for the Southern District of New York

Before MANTON, SWAN, and AUGUSTUS N. HAND, Circuit Judges.

Action by the United States, as assignee of the government of the Union of Soviet Socialist Republics, against the executors of the will of August Belmont, deceased. From a judgment dismissing the complaint, on motion, for failure to state a cause of action, the plaintiff appeals. Judgment affirmed.

Lamar Hardy, U. S. Atty., of New York City (David E. Hudson, Sp. Asst. to Atty. Gen., and Henry Munroe, Sp. Atty., Department of Justice, and Edward J. Ennis, Asst. U. S. Atty., both of New York City, of counsel), for the United States.

Cadwalader, Wickersham & Taft, of New York City (John W. Davis, Cornelius W. Wickersham, William C. Cannon, and Daniel E. Woodhull, Jr., all of New York City, of counsel), for appellees.

Robert J. Sykes, of New York City (Robert J. Sykes and William C. Morris, both of New York City, of counsel), for president and directors of Manhattan Co., amicus curiæ.

Borris M. Komar, for Day-Gormley Leather Co., amicus curiæ.

Opinion

SWAN, Circuit Judge.

This is an appeal by the United States from a judgment which dismissed its amended complaint on the ground that it fails to state facts constituting a cause of action. The complaint is based on a demand upon the executors of August Belmont for payment of money deposited with him prior to 1918 by a Russian corporation known as the "Petrograd Metal Works", and a refusal by the executors to pay. The theory of the action is that the Russian government by decree of June 28, 1918, confiscated the property of the metal works including its account against Belmont, and thereafter assigned the account to the United States.

The assignment to the United States is based upon an exchange of diplomatic correspondence between Commissar Litvinov and Pres-

ident Roosevelt, and a question is raised whether Mr. Litvinov's letter was intended to cover the deposit account in suit. It is urged that it should be construed to assign only claims owed directly to the present Russian government or predecessor governments by American nationals, not claims acquired by confiscation of the property of Russian nationals. But we think the language is too broad to permit of this construction. As this court said of the Litvinov letter in *State of Russie* v. *Nat. City Bank*, 69 F. (2d) 44, 48: "it is apparent that the intent was to assign all the claims of the Soviet government to the United States." See also *United States* v. *Bank of New York & Trust Co.*, 77 F. (2d) 866, 871 (C. C. A. 2).

The next question is whether the decree of June 28, 1918,
49 purported to confiscate the deposit account in suit and transfer title thereto to the Russian government; if it did not, no title was passed to the United States by the assignment. *United States* v. *Buford*, 3 Pet. 12, 30, 7 L. Ed. 585. It is argued by the appellees that the decree should be construed to confiscate only property located within the borders of the Soviet Republic and therefore did not cover the deposit account, whose situs must be deemed to be New York since it was payable here. Such, it is said, has been the construction accorded the decree by the Russian government itself, as indicated by two official circulars to which reference was made by the court in *The Jupiter*, L. R. 1927 P. 122, 144–147. The complaint, however, alleges that the decree, which is appended as an exhibit, caused the deposit account to become the property of the Russian State. Verbally the language of the decree is sufficiently broad to extend to property of the nationalized corporations wherever located, and the allegation that the deposit account was confiscated must, on demurrer, be accepted as true. We are not at liberty, therefore, to look to other sources of Russian law which may interpret the decree differently than has the pleader. If the allegation is incorrect, it should be challenged by a denial and the issue so framed be determined by proof of the Russian law as a fact. Hence the present appeal must be decided on the assumption that the Soviet Republic attempted to confiscate the deposit account in suit and assigned whatever title it thus acquired to the United States.

With respect to property physically located within Russian territory there can be no doubt that the decree of confiscation was effective to transfer title, and that after recognition of the Soviet government by the executive branch of our own government, the courts of this country must enforce titles and rights valid according to Russian law with respect to such property. Oetjen v. Central Leather Co., 246 U. S. 297, 38 S. Ct. 309, 62 L. Ed. 726; Luther v. Sager, L. R. 1921, 3 K. B. 532. Mr. Justice Clarke quoted the doctrine in the following words in the Oetjen opinion, 246 U. S. 297, at page 303, 38 S. Ct. 309, 62 L. Ed. 726; "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done

within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves." But the doctrine is otherwise with respect to property outside its own territory, which a foreign state attempts to confiscate. Laws of foreign governments have extraterritorial effect only by comity and the public policy of the forum determines whether its courts will give effect to foreign legislation. It is very clear that it is contrary to the public policy of the state of New York to enforce confiscatory decrees with respect to property located here at the date of the decree. Vladikavkazsky Ry. Co. v. New York Trust Co., 263 N. Y. 369, 378, 189 N. E. 456, 91 A. L. R. 1426; see, also, N. Y. Sess. Laws 1936, c. 917, adding Civil Practice Act, § 977-b. The same general principle is recognized in Baglin v. Cusenier Co., 221 U. S. 580, 596, 31 S. Ct. 669, 55 L. Ed. 863. Also in England. Lecouturier v. Rey., L. R. 1910 A. C. 262, 265. This is likewise the view prevailing in most of the European countries. See authorities collected in 39 Yale L. J. 1130, 1153 et seq.

The question then becomes whether the metal works' credit with August Belmont, the defendant's testator, was property within Russia or within New York. According to the maxim, "Mobilia sequuntur personam", the plaintiff argues that the situs of a debt is the domicil of the creditor. Blodgett v. Silberman, 277 U. S. 1, 9, 48 S. Ct. 410, 72 L. Ed. 749. But that maxim is not of universal application. In Security Savings Bank v. California, 263 U. S. 282, 285, 44 S. Ct. 108, 110, 68 L. Ed. 301, 31 A. L. R. 391, the court said: "Over this intangible property [money on deposit] the state has the same dominion that it has over tangible property." Similarly in Russian Bank for Foreign Exchange, L. R. 1933 Ch. Div. 745, 767, in speaking of a debt payable in London, Lord Maugham stated that: "Its locality must be taken to be the place where the debt was in the ordinary course recoverable." To the same effect is In re Houdayer's Estate, 150 N. Y. 37, 40, 44 N. E. 718, 34 L. R. A. 235, 55 Am. St. Rep. 642. Compare, also, American Law Institute, Restatement, Conflict of Laws, §§ 213, 258, 300-310. When suit is brought in New York to collect a debt, its courts certainly have power to determine to whom the debt is owed. They have expressly refused to recognize the Russian government's title to such a debt based on the confiscatory decree in question. Vladikavkazsky Ry. Co. v. New York Trust Co., 263 N. Y. 369, 189 N. E. 456, 91 A. L. R. 1426. The distinction between a debt payable here and one payable in Russia is pointed out in Dougherty v. Equitable Life Assur. Soc., 266 N. Y. 71, 88, 193 N. E. 897.

Finally, it is urged that recognition of the Soviet government by the United States, acceptance of the assignment, and institution of the present suit demonstrate that the public policy of the United States is not opposed to enforcement of the confiscatory decree. Recognition permits Russia to resort to our courts and have its rights adjudged by the same principles as apply to other litigants. It expresses no policy as to what those principles are. Nor can the assignment and

the bringing of suit give the assignee any greater right than the assignor had. United States v. Buford, 3 Pet. 12, 30, 7 L. Ed. 585. Confiscation of property within the United States is precluded by the Fifth Amendment to the Constitution. Russian Volunteer Fleet v. United States, 282 U. S. 481, 51 S. Ct. 229, 75 L. Ed. 473. If the public policy of the United States is material, it would seem clearly adverse to a claim based on the Russian decree. But in our opinion it is the policy of New York which this court is to apply. The question is whether the plaintiff's assignor had an enforcible right as successor to the Russian corporation after its nationalization. This is really a question of title and state law, not federal law, governs the matter of title. Under the state law as declared by very recent legislation (N. Y. Sess. Laws, 1936, c. 917, adding Civil Practice Act, § 977-b), the title of the confiscating government is not to be recognized at least until after the expiration of the period within which creditors or stockholders may claim it. Whether the Russian government or its assignee may thereafter sue, if no such claim has been made, is not now before us; but affirmance of the judgment should be, and is hereby declared to be, without prejudice to such an action in that event.

Judgment affirmed.

51 In United States Circuit Court of Appeals for the Second Circuit

[Title omitted.]

Dissenting opinion

MANTON, Circuit Judge (dissenting).

I dissent. See dissenting opinion in United States v. Bank of New York & Trust Co. (C. C. A.) 77 F. (2d) 866.

52 In United States Circuit Court of Appeals, Second Circuit

UNITED STATES, PLAINTIFF-APPELLANT

vs.

MORGAN BELMONT ET AL., ETC., DEFENDANTS-APPELLEES

Judgment filed Aug. 17, 1936

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed without prejudice.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

WM. PARKIN,
Clerk.

53 [File endorsement omitted.]

54 [Clerk's certificate to foregoing transcript omitted in printing.]

55 Supreme Court of the United States

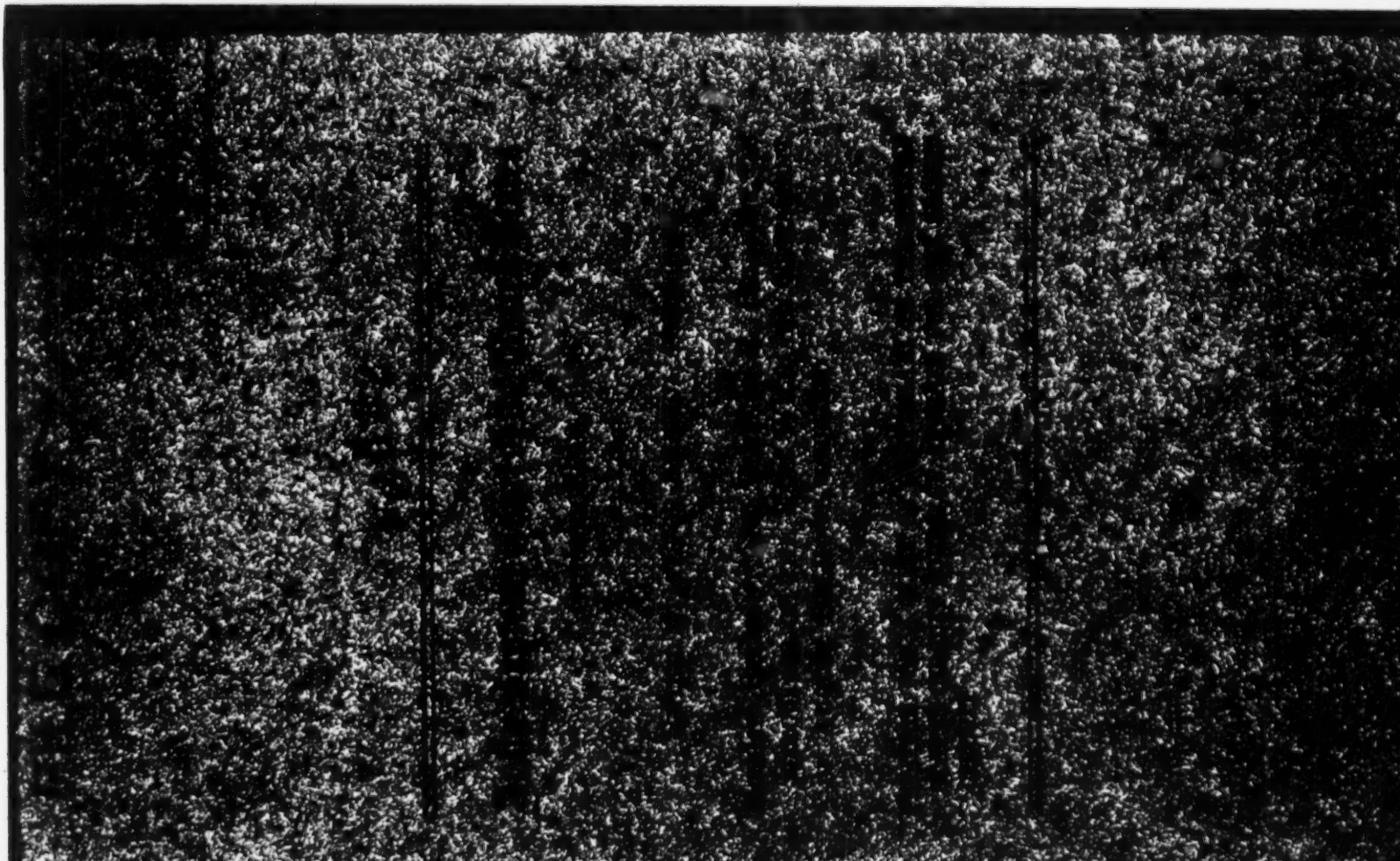
Order allowing certiorari

Filed December 21, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

File No. 41,072. U. S. Circuit Court of Appeals, Second Circuit, Term No. 532. The United States of America, petitioner, vs. Morgan Belmont and Eleanor R. Belmont, as Executors of the Last Will and Testament of August Belmont, Deceased. Petition for a writ of certiorari and exhibit thereto. Filed November 17, 1936. Term No. 532 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1937



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106140—38

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Second Circuit entered in the above case on August 17, 1936, affirming the judgment of the United States District Court for the Southern District of New York.

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 35–37) is not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 49–52) is reported in 85 F. (2d) 542.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Second Circuit was entered August 17, 1936 (R. 52). The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether decrees of the Soviet Government dissolving a Russian corporation, appropriating all of its assets, and terminating all rights of creditors and stockholders therein, will be given effect in the United States so as to transfer to the Soviet Government title to a bank deposit in New York forming part of the assets of such corporation.

2. Whether, in determining this question, the public policy of the State of New York controls, where the Soviet Government has assigned the title to such assets to the United States by international agreement.

STATEMENT

The Kompania Petrogradskago Metallicheskago Zavoda (Petrograd Metal Works) was prior to 1918 a corporation organized and existing under the laws of Russia where it conducted a metallurgical and metal manufacturing business (R. 6). It had a deposit of $25,438.48 with August Belmont & Company under which firm name and style August Belmont carried on a private banking business in the Borough of Manhattan, City of New York, until

his death December 10, 1924 (R. 6). On December 29, 1924, the Surrogate's Court of Nassau County issued letters testamentary to the respondents, Morgan Belmont and Eleanor R. Belmont, and they have since been in possession of this fund (R. 8). In 1918, the Government of Russia decreed the dissolution, termination, and liquidation of certain Russian corporations, including the Petrograd Metal Works, and nationalized and appropriated the assets thereof (R. 7). On or about November 16, 1933, an executive agreement was concluded by an exchange of diplomatic correspondence between the President of the United States and M. Litvinov, People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics. The Soviet Government released and assigned to the United States Government all amounts due or that might be found to be due the Soviet Government from American nationals, including the bank deposit with Belmont & Company. The assignment stated that it was made "preparatory to a final settlement of the claims and counterclaims" between the two governments and the claims of their nationals (R. 8–9, 25).

On or about June 18, 1935, the petitioner demanded from the respondents the payment of $25,438.48, formerly standing to the credit of the metal company with the August Belmont Company, and the respondents have failed to comply with this demand. Suit was instituted by the United States for the recovery of this fund. Defendants moved

to dismiss the complaint for failure to state a cause of action. The motion was granted and the United States appealed. On appeal the United States Circuit Court of Appeals for the Second Circuit affirmed the judgment of the District Court, one judge dissenting.

SPECIFICATION OF ERRORS TO BE URGED

The United States urges that the Circuit Court of Appeals for the Second Circuit erred:

(1) In holding that the nationalization decree of the Soviet Government did not have the effect of transferring to that Government title to the intangible personal property of the former Petrograd Metal Works in the United States.

(2) In holding that diplomatic recognition of the Government of the Union of Soviet Socialist Republics by the Government of the United States did not require the courts of the United States to give full force and effect to the said decree of the Soviet Government as to personal property wherever located.

(3) In holding that by the decree of nationalization the Soviet Government did not become the statutory successor of the former Petrograd Metal Works and entitled to immediate possession of all of its assets, including the bank deposit.

(4) In holding that enforcement of the decree of the Soviet Government dissolving the former Petrograd Metal Works and nationalizing and appropriating all of its properties, including the said

bank deposit, is controlled by the public policy of the State of New York.

(5) In failing to hold that the bank deposit in question had a *situs* in Russia for the purposes of this case.

(6) In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The questions here presented are substantially identical with the questions on the merits presented but not passed upon in *United States* v. *Bank of New York and Trust Co.*, 296 U. S. 463. In that case the Court stated that the writ of certiorari had been granted "because of the nature and importance of the questions presented." 296 U. S. at 471.[1] Since substantially the same questions are again presented in this case and as these questions have not yet been determined, the Court should grant the writ of certiorari prayed for herein.

The court below, while accepting the allegations of the complaint that the Soviet decrees terminated

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[1] The Court, in holding that the Federal courts had no jurisdiction of the particular suits, pointed out that the United States could invoke the jurisdiction of the state court "and the decision of the state court of any federal question which may be presented upon such an invocation, may be reviewed by this Court and thus all the questions which the Government seeks to raise in these suits may be appropriately and finally decided." 296 U. S. at 479.

It is to be noted that no jurisdictional question is presented in the case at bar.

the existence of the metal company and transferred all of its property in Russia to the Soviet Government, held that these decrees should not be given effect with respect to corporate property in the United States. This decision runs counter to the generally accepted principles governing the relations of a sovereign to its corporations and their property.

A State which creates a corporation likewise has the power to dissolve it, *Oklahoma Gas Co.* v. *Oklahoma,* 273 U. S. 257, and the law of the State of incorporation governs the relationship between a corporation and its creditors and shareholders. *Canada Southern Ry.* v. *Gebhard,* 109 U. S. 527; *Royal Arcanum* v. *Green,* 237 U. S. 531; *Modern Woodmen* v. *Mixer,* 267 U. S. 544; *Broderick* v. *Rosner,* 294 U. S. 629. In the *Gebhard* case, this Court stated (at p. 537):

> Whatever disabilities are placed upon the corporation at home it retains abroad, and *whatever legislative control it is subject to at home must be recognized and submitted to by those who deal with it elsewhere.* A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia,* 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and *subject to all the legislative control and direction that may be*

> *properly exercised over it at the place of its creation.* Such being the law, it follows that every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and *whatever is done by that government in furtherance of that policy which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him.* He is conclusively presumed to have contracted with a view to such laws of that government, because the corporation must of necessity be controlled by them, and it has no power to contract with a view to any other laws with which they are not in entire harmony. [Italics supplied.]

It has long been settled that upon the dissolution of a corporation the person designated by the law of the State of incorporation to take title to the assets of the dissolved corporation becomes entitled to bring suit in his own name for such assets, wherever located. *Clark* v. *Williard,* 292 U. S. 112; *Relfe* v. *Rundle,* 103 U. S. 222; *Martyne* v. *American Union Fire Ins. Co.,* 216 N. Y. 183; Restatement

of the Law of Conflict of Laws, Sec. 161.[2] We submit that the same principle should apply where a foreign sovereign dissolves a corporation and takes title to all the assets of the corporation in its own sovereign capacity, and that consequently the decision of the court below is in conflict with well established doctrine.

The court below in refusing to give effect to the Soviet decrees held itself bound by what it conceived to be the public policy of the State of New York. It is submitted that the public policy of an individual state is inoperative in a matter involving the international relations of the United States. Prior to the recognition of the Soviet Government and the assignment to the United States of claims arising out of the nationalization decrees, the individual States were free to apply their own policy as to whether such decrees should be given effect. However, after the recognition and the assignment, the effectiveness of these decrees, with respect to property covered by the assignment, became a matter of national and international concern. If any concept of public policy can stand in the way of

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[2] Section 161 provides: "If a statute of the state of incorporation which is in force at the time of the dissolution of a corporation provides that all its assets shall, upon dissolution pass to a person designated in the statute, the right of such person to the personal property, wherever situated and whether tangible or intangible, will be recognized and given effect by other states, and the designated person can bring suit in any state upon claims due to the corporation."

their enforcement it must only be some public policy of the United States, not that of any individual State. It would be impracticable and probably fatal to the proper exercise by the Executive of his constitutional power in the field of foreign relations, if each of the forty-eight States were permitted to superimpose its own local policy with respect to matters which have been made the subject of international agreement.

It is submitted that the executive branch of the Government, by the Chief Executive, has, by the formal negotiation of the assignment, in effect declared what is the public policy of the United States with regard to the decrees of the Soviet Government in so far as they relate to property covered by the assignment.

There are now pending in the state courts or lower Federal courts about fifteen suits, involving approximately $8,000,000, in which suits the United States Government is claiming under the assignment by the Soviet Government. These suits involve the same fundamental issue as is presented in the case at bar. A determination of this issue will therefore be of great practical significance.

As part of the diplomatic negotiations which resulted in the recognition of the Soviet Government, the latter assigned to the United States Gov-

ernment numerous claims, including the one here in suit, "*preparatory to a final settlement of the claims and counterclaims" between the two Governments, and the claims of their nationals.* (R. 25.) The fundamental issue in this case is whether this assignment is to be given the effect intended by the contracting parties. If the title of the Soviet Government to the property involved in this and similar cases arising under the assignment cannot be sustained, it will have a serious effect on the future settlement of international claims now outstanding between the two Governments and their nationals. To subject the title of the Soviet Government, and the claim herein asserted by the United States Government, to the varying and uncertain policies of each of the States would embarrass, if not defeat, any attempt to arrive at a settlement of these international questions. Thus there is involved a matter of high public and international importance which should be determined by this Court.

Wherefore it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

NOVEMBER 1936.

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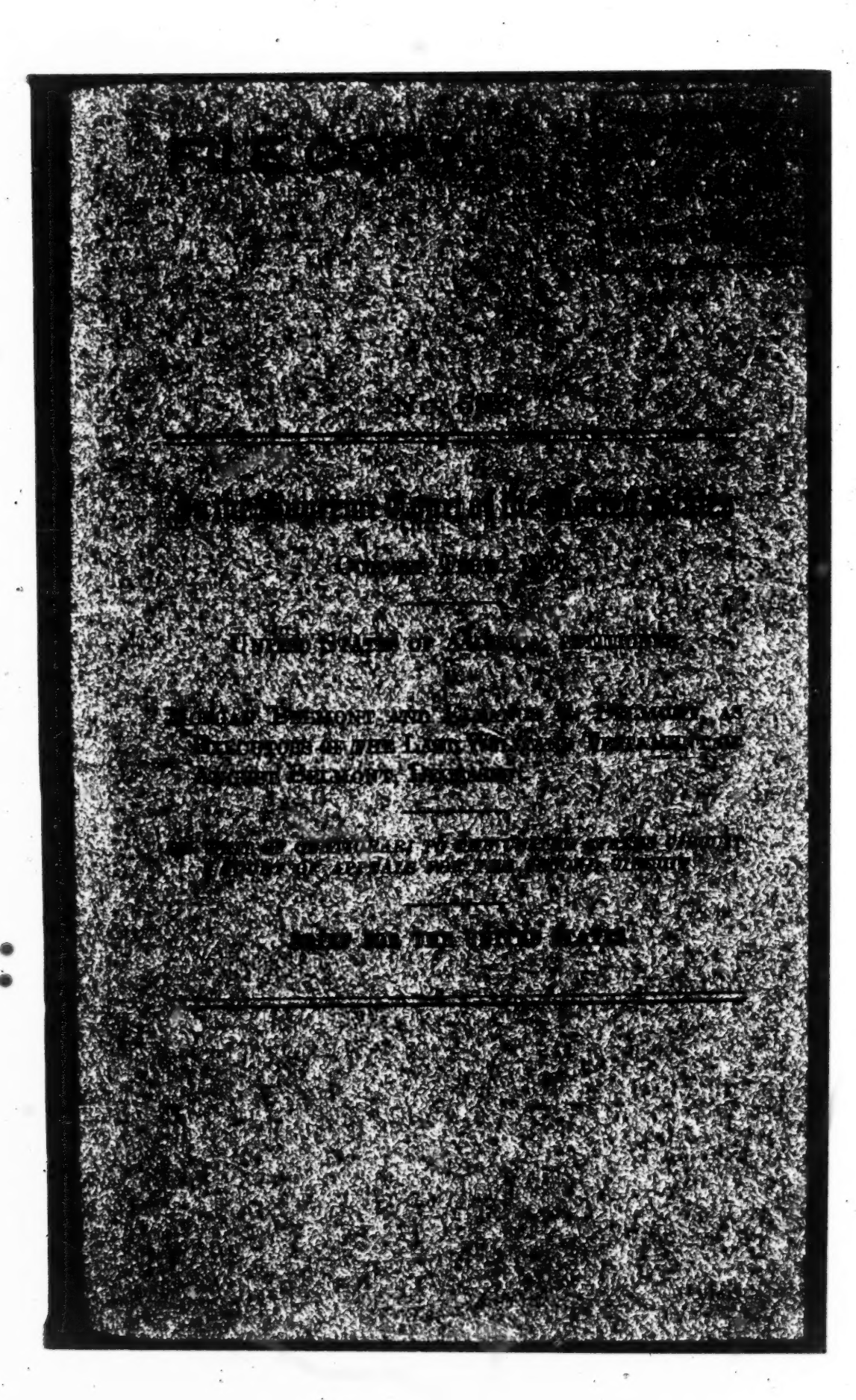

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 532

UNITED STATES OF AMERICA, PETITIONER

v.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 17–18) is not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 22–25) is reported in 85 F. (2d) 542.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Second Circuit was entered August 17, 1936

(R. 25). The petition for a writ of certiorari was filed on November 17, 1936, and was granted on December 21, 1936 (R. 26). The jurisdiction of this Court rests upon the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

By duly enacted decrees the Soviet Government dissolved a Russian corporation and appropriated its assets, including the right to receive the amount of a deposit with a bank in New York. Thereafter the Soviet Government, by an international agreement for the settlement of international claims, assigned all its rights against American nationals to the United States Government.

The questions are:

1. Was the right to receive this bank deposit subject to the operation of the Soviet decrees which transferred the right to the Soviet Government?

2. Is there any controlling public policy which prevents the enforcement of that right, in a Federal court, by the United States as assignee of the Soviet Government?

EXECUTIVE AGREEMENT AND STATUTE INVOLVED

Agreement between the President of the United States and the People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, concluded November 16, 1933 (R. 12–14), Appendix, *infra*, pp. 53–56; Section 977-b, New York Civil Practice Act, Appendix, *infra*, pp. 56–65.

STATEMENT

The Kompania Petrogradskago Metallicheskago Zavoda (Petrograd Metal Works) was prior to 1918 a corporation organized and existing under the laws of Russia where it conducted a metallurgical and metal manufacturing business (R. 3). It had a deposit with August Belmont & Co., under which firm name August Belmont carried on a private banking business in New York until his death in 1924 (R. 3). Thereafter the Surrogate's Court of Nassau County, New York, issued letters testamentary to the respondents, Morgan Belmont and Eleanor R. Belmont (R. 4).

In 1918 the Soviet Government decreed the dissolution, termination, and liquidation of certain Russian corporations, including the Petrograd Metal Works, and nationalized and appropriated the assets thereof (R. 3, 6).

On November 16, 1933, an executive agreement was concluded by an exchange of diplomatic correspondence between the President of the United States and M. Litvinov, People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics (R. 12–14). By this agreement the Government of the Union of Soviet Socialist Republics released and assigned to the United States Government all amounts due or that might be found to be due the Soviet Government as successor of prior governments of Russia, or otherwise, from American nationals, including the deposit with the Belmont firm (R. 5). The assign-

ment stated that it was made "preparatory to a final settlement of the claims and counter-claims" between the two governments and their nationals (R. 12).

On June 18, 1935, the United States demanded from the respondents the payment of $25,438.48, the amount standing to the credit of the Metal Company with the former Belmont firm, and the respondents have failed to comply with this demand (R. 5). Suit was then instituted by the United States in the United States District Court for the Southern District of New York, for the recovery of the amount of this deposit. Defendants moved to dismiss the complaint for failure to state a cause of action (R. 16). The motion was granted and the United States appealed. The United States Circuit Court of Appeals for the Second Circuit affirmed the judgment of the District Court, one judge dissenting.[1]

SPECIFICATION OF ERRORS TO BE URGED

The petitioner urges that the Circuit Court of Appeals for the Second Circuit erred:

1. In holding that the nationalization decree of the Soviet Government did not have the effect of transferring to that Government title to the in-

[1] On June 8, 1936, while the appeal was pending in the Circuit Court of Appeals, the Legislature of the State of New York enacted section 977b of the Civil Practice Act, which is printed in the Appendix, *infra*, pp. 56–65, and is discussed at pp. 42–48, *infra*.

tangible personal property of the former Petrograd Metal Works in the United States.

2. In holding that diplomatic recognition of the Government of the Union of Soviet Socialist Republics by the Government of the United States did not require the courts of the United States to give full force and effect to the said decree of the Soviet Government as to personal property wherever located.

3. In holding that by the decree of nationalization the Soviet Government did not become the statutory successor of the former Petrograd Metal Works and entitled to immediate possession of all of its assets, including the bank deposit.

4. In holding that enforcement of the decree of the Soviet Government dissolving the former Petrograd Metal Works and nationalizing and appropriating all of its properties, including the said bank deposit, is controlled by the public policy of the State of New York.

5. In failing to hold that the bank deposit in question had a *situs* in Russia for the purposes of this case.

6. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

The right to receive the amount of the bank deposit was governed by Russian law. Under that law the Soviet Government validly acquired

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that right, and it should therefore be enforced in our courts.

This is an action at law and therefore only issues between the parties hereto can be considered. *Petrogradsky Bank* v. *National City Bank*, 253 N. Y. 23.

I

THE ACQUISITION OF THE RIGHT

A. A bank deposit creates a debtor-creditor relationship resulting in an *obligation to pay* on the part of the bank and a *right to receive* the amount of the deposit on the part of the creditor. *Chicago, Rock Island & P. Railway* v. *Sturm*, 174 U. S. 710, 714. The *obligation to pay* is situated at the place of business of the bank, in this case, New York, but the *right to receive* is situated at the place where the creditor is located. Here the creditor was a corporation created under Russian law and having its principal place of business in Russia. Consequently the right to receive was situated in Russia, and the ownership and transfer of that right were subject to Russian law. When, by Russian law, the right of the Metal Company was divested and was transferred to the Soviet Government, the latter acquired a valid right, which should be enforced in our courts.

B. The transfer of the right to receive the amount of the deposit, from the Metal Company to the Soviet Government, was in effect an assignment of a *chose in action*. When the domicile

of the assignor and the assignee and the place of assignment are the same, the law of that place governs the validity and effect of the assignment. This principle is applicable to the assignment of a bank deposit. *Republica de Guatemala* v. *Nunez* (1927), 1 K. B. 669.

C. The court below proceeded on the theory that a bank deposit has a *situs* only at the place where it is payable. But the *situs* of an intangible is not necessarily localized at one place for all purposes. *Severnoe Securities Corp.* v. *London and Lancashire Ins. Co.*, 255 N. Y. 120, 123. If the concept of *situs* is to be applied to a bank deposit, then for the purpose of determining succession or transfer of ownership, the *situs* is at the domicile of the creditor. Under the rule *mobilia sequuntur personam*, the succession to personal property depends upon the law of the domicile of the decedents. *Ennis* v. *Smith*, 14 How. 399; In re *Lyon's Estate*, 175 Wash. 115, 26 P. (2d) 615. The same rule applies in the case of the dissolution of a corporation. *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, 259. Consequently the transfer of the right to receive this deposit was controlled by Russian law.

D. The State which creates a corporation has the power to dissolve it. *Pendleton* v. *Russell*, 144 U. S. 640; *Canada Southern Ry.* v. *Gebhard*, 109 U. S. 527. On the dissolution of a corporation, the successor designated by the State of its incorpora-

tion obtains title to the corporation's assets wherever situated. *Relfe* v. *Rundle*, 103 U. S. 222. The Soviet Government had power to and did dissolve the Metal Company and constitute itself as the successor of the company. It thereby acquired the right to this bank deposit.

II

THE ENFORCEMENT OF THE RIGHT

A. This Court has held that it will give effect to the decrees of foreign governments with respect to property situated in their territories, irrespective of whether such decrees are confiscatory. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297.

Special reasons call for the application of that rule here. The assignment was procured for the benefit of the United States Government and United States citizens having claims against the Soviet Government. The public policy of the United States favors the settlement of the international claims of its citizens. Consequently, the public policy of the United States accords with the enforcement of the right acquired under this assignment. By accepting the assignment, the Executive has declared in favor of the enforceability of the right, a declaration which he was entitled to make as the sole organ of the Government in the field of foreign relations.

The Fifth Amendment is not applicable. There is no taking from the Belmont firm, which is under

an obligation to repay the amount of the deposit. The taking from the Metal Company was by its sovereign, the Soviet Government, and not by the United States.

B. The New York courts have expressly held that the Russian nationalization decrees transferring the ownership of tangible or intangible property situated in Russia will be enforced. *Salimoff* v. *Standard Oil Co.*, 262 N. Y. 220; *Dougherty* v. *Equitable Life Assurance Soc.*, 266 N. Y. 71. Since the right to receive the amount of the bank deposit was legally situated in Russia, this rule applies to the right of petitioner. *Vladikavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369, relied on by the court below as constituting a refusal to recognize the Soviet Government's title, does not support such a view.

C. Section 977b of the New York Civil Practice Act, recently enacted, has no application to the issues before this Court.

The provision denying validity or effectiveness to nationalization decrees is to be construed as coming into operation only where a receiver brings suit or has been substituted for the corporation in a pending action. It is not applicable here, where neither the receiver nor the corporation is a party.

If the statute is to be considered as merely a reiteration of the rule of public policy laid down in

the decisions of the New York Court of Appeals, the statute does not prevent the enforcement of a right validly acquired under foreign law. *Salimoff* v. *Standard Oil Co., supra; Dougherty* v. *Equitable Life Assurance Soc., supra.*

If the statute be considered as extending the rule laid down in the decisions of the New York Court of Appeals, it would have the effect of divesting the United States of a right which had been acquired prior to the enactment of the statute. *Coombes* v. *Getz*, 285 U. S. 434.

The view of the court below, that the statute provides that the title of the Russian Government is not to be recognized until after the expiration of the period within which other claims against the Metal Company may be asserted, does not require the dismissal of this complaint. This record presents only the question as to whether the complaint states a valid cause of action against these defendants. If this Court reverses the judgment of the court below, respondents could set up the statute in their answer, and if the statute were held valid and applicable, the enforcement of the claim of petitioner might then be postponed pending the assertion of adverse claims.

D. If it be conceded for purposes of argument that the public policy of New York denies the aid of its courts in the enforcement of this right, the Federal courts are not bound to follow this local rule. Validly acquired rights will be enforced in

the Federal courts even though not enforceable in the State courts. *David Lupton's Sons Co.* v. *Automobile Club of America*, 225 U. S. 489; *Boyce* v. *Tabb*, 18 Wall. 546.

* * * * *

The above principles are peculiarly applicable in this case. The Litvinov assignment constitutes a step in the settlement of international claims, a matter of international relations in which the States have no power. *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided Dec. 21, 1936. To hold the enforcement of petitioner's right subject to the local policies of the various States would defeat our National Government in its attempt to arrive at a solution of these international questions.

ARGUMENT

INTRODUCTION

The court below has pointed out (R. 23) that in accordance with the rule that allegations of fact are admitted by demurrer, the petitioner's allegation that the deposit was appropriated by the decree of June 28, 1918 (R. 6–12) must be accepted as true. No question, therefore, as to legislative intent is in issue herein.

The court below further held (R. 23) that the Litvinov assignment must be construed to include not only obligations of American nationals owed directly to the Soviet Government, as successor to prior governments, but also any claims acquired under its decrees of nationalization. The question as to the scope of the assignment is therefore not discussed herein.

The court below stated that "the question then becomes whether the Metal Works' credit with August Belmont, the defendants' testator, was property within Russia or within New York." On this question it ruled that the debt was property outside Russian territory, for the purpose of determining the title thereto. In so holding, the court viewed the debt as governed by a single law, namely, the law of the domicile of the debtor, for the determination of all rights and legal relationships appertaining thereto.

Holding that the debt was property located in New York, the court then ruled that it was governed by New York law, and that New York public policy is opposed to enforcement of the decree of June 28, 1918, in so far as it relates to this bank deposit.

* * * * *

This is an action at law, between the bank and the United States which claims as assignee of the Soviet Government. In such an action the only issues which may be considered are those between the parties. The claims of any third parties must be excluded from consideration unless and until they become parties to the action. As the New York Court of Appeals said in *Petrogradsky Bank* v. *National City Bank*, 253 N. Y. 23, 38–39:

> The possibility of adverse claims does not relieve the defendant from liability when sued in an action at law by a depositor who is successful in proving a title to the fund.
>
> The defendant cites our decision in *Russian Reinsurance Co.* v. *Stoddard* (240 N. Y. 149, April, 1925), as supporting its defense. The ruling is inapplicable to the situation now before us. There the subject of the controversy was a fund deposited in a bank to be held as trustee for a Russian insurance company, its stockholders and creditors. The company made demand that the *res* be returned by the trustee upon the ground that the purposes of the deposit had failed and that the trust was at an end. The bank

set up in defense the existence of an adverse claim of title by the Soviet Republic, and the danger that this claim might be upheld in France and in other countries where the Soviet decrees were recognized as law. We held that in a suit in equity, there is discretion, if not duty, to refuse a decree whereby a trustee will be directed to make payment of the subject of the trust to one of two claimants unless there is power also by force of the same decree to protect against the rival (*Mahr* v. *Norwich Union Fire Ins. Co.*, 127 N. Y. 452). The rule is different altogether in actions at law (*Chapman* v. *Forbes*, 123 N. Y. 532; *Bauer* v. *Dewey*, 166 N. Y. 402). Here in the case before us the subject of the controversy is not property burdened with a trust to be administered in equity. The subject is an ordinary deposit in a bank to be sued for, if at all, in an action founded on the debt. In actions of that order, a refusal to pay when due is not sustained without more by the presence of an adverse claim. The defendant, if unable to interplead, must respond to the challenge and defend as best it can (*Coler* v. *Corn Exchange Bank*, 250 N. Y. 136, 145; *Newhall* v. *Longacre Bank*, 248 N. Y. 252, 254; *Scheffer* v. *Erie County Sav. Bank*, 229 N. Y. 50, 53).

The sole issue before this Court is whether the petitioner's complaint states a cause of action against respondents. There is not involved in this

proceeding, at this time, any question as to the rights as between petitioner and possible adverse claimants. Those issues, if any, may be determined by the trial court after the action has been allowed to proceed, and the respondents have been required to answer. A determination of this motion to dismiss, in favor of the petitioner, will in no way foreclose adverse claimants from becoming parties to the action for the purpose of asserting their rights.

I

THE RIGHT TO RECEIVE THE AMOUNT OF THE BANK DEPOSIT WAS GOVERNED BY RUSSIAN LAW AND WAS VALIDLY ACQUIRED BY PETITIONER'S ASSIGNOR

A. When the deposit was made with the Belmont firm there was created between the Metal Company and the Belmont firm a debtor-creditor relationship. *Vladikavkazsky Railway Co.* v. *New York Trust Co.*, 263 N. Y. 369, 375. As a result of this relationship, there was imposed an obligation upon the Belmont firm to repay to the Metal Company the amount of the deposit upon its demand. Correlative to this obligation there was a right in the Metal Company to receive back the equivalent of the sums which were deposited. Both the obligation to pay and the right to receive are of a personal nature; the former follows the debtor, while the latter follows the creditor. Applying that principle here, New York law may determine the existence of an obligation to pay someone; but Russian law must determine to whom payment should be made.

The distinction between the obligation to pay and the right to receive was clearly pointed out in *Chicago, Rock Island & P. Railway* v. *Sturm*, 174 U. S. 710, 714, where this Court said:

> The right of a creditor and the obligation of a debtor are correlative but different things, and the law in adapting its remedies

for or against either must regard that difference.

The cases involving garnishment illustrate this distinction, for in those cases it is pointed out that garnishment is concerned only with the "obligation to pay", which obligation follows the debtor. See, for example, *Harris* v. *Balk*, 198 U. S. 215, 222, 223.

The distinction has been carefully analyzed by Minor in his treatise on *Conflict of Laws*. He says (pp. 275–276):

> Before laying down any rules for the determination of the *situs* of debts, it will repay us to notice briefly the dual meaning of the term "debt." The phrases "chose in action" and "debt" are often used as synonymous. But they are rather correlative than synonymous. They represent the same thing, but viewed from opposite sides. The "chose in action" is the right of the creditor to be paid, while the "debt" is the obligation of the debtor to pay. * * *
>
> The *chose in action*, or right of the creditor, is a personal right which adheres to him wherever his situs may be. It may for some purposes be his *legal* situs (or domicil), for others his *actual* situs. Just as, in the case of tangible chattels, though the *title* thereto follows the owner, and its transfer will be regulated by the law of the owner's situs, yet his or his transferee's ability to enforce that title may be in the exceptional cases determinable by a different system of law should the chattels be actually situated elsewhere;

> so also in the case of debts, though the *right* to enforce them follows the owner (the creditor), and his transfer is therefore to be governed by the law of his situs, actual or legal, yet his or his transferee's *ability* to enforce that right may depend upon another jurisdiction and system of law, if he has to resort to another State to sue the debtor. In other words, though the situs of the creditor's right follows the creditor, the situs of the debtor's obligation follows the debtor, in the sense that the debtor's legal obligation exists only in the State where it can be enforced against him. * * *
>
> It will be seen therefore that, while the situs of the creditor's right (chose in action) follows the creditor and corresponds to the *legal* situs of tangible chattels, the situs of the debtor's obligation follows the actual situs of the debtor, or of his property (in case of a proceeding *in rem* to enforce it), and corresponds to the *actual* situs of tangible chattels.

Applying the above to the facts of this case, it is clear that the *situs* of the right to receive the amount of the deposit was in Russia, where the Metal Company was created and conducted its business.

The right to receive the amount of a deposit is an intangible property right. It is governed by the general legal principle that an intangible property right is subject to the control of the law of the territory within which such right exists.

Security Savings Bank v. *California*, 263 U. S. 282, 285.

In the instant case this intangible property right was in Russia. Consequently, when by the decree of June 28, 1918, the right of the Metal Company was divested and was transferred to the Soviet Government, the latter acquired a valid right under its own law, which right will be recognized by our courts.

B. The transfer of the right to receive the amount of the deposit from the Metal Company to the Soviet Government was in effect an assignment of a chose in action. In *United States* v. *Bank of New York and Trust Company*, 77 F. (2d) 866, affirmed, 296 U. S. 463, the Circuit Court of Appeals for the Second Circuit, speaking of intangible personal property (cash and securities formerly belonging to a dissolved Russian corporation and nmationalized by Russian decrees) stated p. 868):

> There can be no serious dispute that its property and all its corporate rights in Russia were subject to such disposition as actually took place in accordance with Russian law. The Russian State obviously could, and this record shows that it did, confiscate everything belonging to this corporation within the confines of Russia. It could, and did, acquire for itself every right the corporation in Russia possessed. It became the corporation there so far as we are now concerned. It had all its property and

> rights as fully as though the corporation had *lawfully assigned them to it* before dissolution. To that extent our public policy as to confiscatory decrees, so far as it may be expressed by our courts, is of no moment. [Italics supplied.]

Here the domicile of the assignor, the Metal Company, and of the assignee, the Soviet Government, and the place of assignment are the same. Consequently, the law of that place, rather than the law which governs the original obligation to pay the debt, governs the validity of the assignment. This is the general rule, as well as the New York rule, with respect to negotiable instruments. *United States* v. *Guaranty Trust Co.*, 293 U. S. 340, 346; *Weissman* v. *Banque de Bruxelles*, 254 N. Y. 488; *Embiricos* v. *Anglo-Austrian Bank* (1905), 1 K. B. 677 (Court of Appeal); Beale, *The Conflict of Laws*, Section 350.1; *Restatement of the Law of Conflict of Laws*, Sections 350–353.

The rule that the law of the domicile of the assignor or of the assignee or of the place of the assignment governs the assignment of a chose in action has been applied expressly to the assignment of a bank deposit. *Republica de Guatemala* v. *Nunez*, (1927) 1 K. B. 669 (Court of Appeal). In this case Cabrera, domiciled in and the President of the Republic of Guatemala, assigned in Guatemala, by a written instrument and without consideration, his bank deposit with a banking firm in London to his infant son Nunez domiciled in

Guatemala. The assignment was valid by the law of England but invalid by the law of Guatemala. Later Cabrera, still in Guatemala, acknowledged in writing that the same bank deposit belonged to the Republic of Guatemala. Both the Republic of Guatemala and Nunez claimed the deposit. The claim of Nunez was rejected on the ground that the law of Guatemala, which governed the assignment, rendered it invalid, and the claim of the Republic of Guatemala was defeated for lack of proof. The Court of Appeal, by Lord Justice Scrutton, stated at page 693:

> It seems to me, therefore, that the authorities cited by Mr. Dicey do not support the proposition that a transaction as to an English debt, void by the law of the country where it takes place and by the law of the domicil of the parties to it, will be treated as valid in the country where the debt is deemed to be situated. In my opinion, both the capacity of the parties to enter into such a transaction and *the validity and effect of such a transaction in form and results* must be determined by one or the other of those laws; and in this case they are the same. [Italics supplied.]

In that case, in applying the rule respecting the transfer of negotiable instruments to the assignment of a bank deposit not evidenced by a negotiable instrument, Lord Justice Scrutton rejected the distinction between a debt evidenced by such an instrument and a debt not so evidenced. He held

that the validity of assignments of debts of both types was governed by the law either of the place of assignment or of the domicile of the parties thereto. This law being the same in the situation before him, he did not decide which law would be applicable, had there been a choice between one law or the other. He stated, in referring to several negotiable instrument cases, at page 691:

> In each case the foreign transaction [i. e. assignment or transfer of a negotiable instrument] would not have legal effect in England, but in each case it was held that, being valid by the *lex loci actus*, the English law would give effect to it. I can not think that the suggested difference between the piece of paper and the chose in action represented by it is satisfactory.

The *Nunez* case was followed in a similar situation in *Matter of Anziani* (1930), 1 Ch. 407. The *Nunez* and *Anziani* cases were cited with approval by the Court of Appeals of New York in *Hutchison* v. *Ross*, 262 N. Y. 381, 391. The same doctrine was followed by the Appellate Division with respect to an assignment of an account receivable payable in New York in *Hanna* v. *Lichtenhein*, 169 N. Y. Supp. 589, 591 (reversed on other grounds, 225 N. Y. 579), where it was said:

> The assignments were made in New Jersey, which was also the state of the domicile of the creditor. Therefore the law of New Jersey, it being the place of the contract and the situs of the thing, would govern.

We submit that these cases are authority for the proposition that the validity of the right acquired by the Soviet Government from the Metal Company is governed by Russian law.

C. The preceding discussion has shown that the Soviet Government acquired under Russian law a right to receive the amount of the deposit in question. This right was located in Russia, as distinguished from the obligation to pay which was located in New York. The court below proceeded on a different theory, namely, that a bank deposit has a *situs* which is always and for all purposes at the place where it is payable. We submit that that theory is erroneous. The *situs* of an intangible is not necessarily localized at one place for all purposes. As the Court of Appeals of New York stated in *Severnoe Securities Corp. v. London and Lancashire Insurance Co.*, 255 N. Y. 120, 123:

> The situs of intangibles is in truth a legal fiction, but there are times when justice or convenience requires that a legal situs be ascribed to them. The locality selected is

> for some purposes, the domicile of the creditor; for others, the domicile or place of business of the debtor, the place, that is to say, where the obligation was created or was meant to be discharged; for others, any place where the debtor can be found [citing cases] * * *. What we are to determine in the case at hand is the locality to be chosen for the exercise by conservators of powers born of an emergency. For that purpose, if not for others, the situs of the chose in action, the subject of this claim, is in England and perhaps in Russia, but certainly not here.

We submit that, if the concept of *situs* is to be applied to a bank deposit, then for the purpose of determining succession or transfer of ownership that *situs* is at the domicile of the creditor.

The same conclusion follows from an application of the well-established doctrine of *mobilia sequuntur personam,* of which this Court said in *Blodgett* v. *Silberman,* 277 U. S. 1, 9:

> At common law the maxim "*mobilia sequuntur personam*" applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the State of the domicil or else-

> where, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.

Referring to taxation, in *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204, 211, this Court stated:

> While debts have no actual territorial situs we have ruled that a State may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the creditor's domicile for taxation purposes.

The doctrine is applied in connection with devolution of title, upon intestacy. *Ennis* v. *Smith,* 14 How. 399. In *Sultan of Turkey* v. *Tiryakian,* 162 A. D. 613, affirmed, 213 N. Y. 429, the Appellate Division stated (p. 615):

> It is a well-settled general rule of international law that the succession to personal property depends upon the law of the domicile of the decedent.

A case closely in point is *In re Lyons' Estate,* 175 Wash. 115, 26 P. (2d) 615. Upon the death without heirs of a bank depositor domiciled in Alaska, the State of Washington claimed the amount of his bank deposit within the State under a statute providing for escheat of property within the State of any person dying intestate without heirs. It was held that the amount of the bank deposit should go

to the administrator in Alaska and not to the State of Washington. The court said (26 P. (2d) at 618):

> The debt owing by the Seattle bank was a credit belonging to the decedent Lyons before and at the time of his death; and, applying the rule *mobilia sequuntur personam*, the situs of this property was at the domicile of its owner, and therefore it was not property within this state at the time of his death and not subject to escheat under our statute.

This Court has pointed out that the dissolution of a corporation "can not be distinguished from the death of a natural person in its effect." *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, 259.

As was stated by the New York Court of Appeals, in *Russian Reinsurance Co.* v. *Stoddard*, 240 N. Y. 149, 167, in passing upon the right of a Russian insurance corporation to recover its surplus assets in New York:

> We have pointed out that the existence of the corporate plaintiff, its right to sue, the authority of the directors *and the devolution of title to its assets must all be determined by Russian law.* [Italics supplied.]

Applying the doctrine of *mobilia sequuntur personam*, it follows that this deposit must be deemed to have a *situs* at the domicile of the former owner, the Metal Company, for the purposes of determining succession or transfer of ownership, and that being under the legal control of the Soviet Gov-

ernment it was validly transferred to that government.

D. Heretofore we have shown that petitioner's claim is valid under general principles governing the legal relations arising out of a bank deposit. Petitioner's claim is also supported by the principles governing the relations between a corporation and the sovereign which created it.

The complete dominion of a State over corporations created by it is unquestioned. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 587; *Head* v. *Providence Insurance Company*, 2 Cranch 127, 168. The creation and extinguishment of a corporation are governed by the law of the State of incorporation. *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, 259; *Canada Southern Railway* v. *Gebhard*, 109 U. S. 527, 538; *Pendleton* v. *Russell*, 144 U. S. 640.

In *Canada Southern Ry.* v. *Gebhard, supra* (p. 537), the Court stated as follows:

> A corporation "must dwell in the place of its creation, and cannot migrate to another sovereignty" (*Bank of Augusta* v. *Earle*, 13 Pet. 588), though it may do business in all places where its charter allows and the local laws do not forbid. *Railroad* v. *Koontz*, 104 U. S. 12. But wherever it goes for business it carries its charter, as that is the law of its existence (*Relf* v. *Rundel*, 103 U. S. 226), and the charter is the same abroad that it is at home. Whatever disabilities are placed upon the corporation at home it re-

tains abroad, and whatever legislative control it is subject to at home must be recognized and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia,* 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation. Such being the law, it follows that every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and whatever is done by that government in furtherance of that policy which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him. He is conclusively presumed to have contracted with a view to such laws of that government, because the corporation must of necessity be controlled

> by them, and it has no power to contract with a view to any other laws with which they are not in entire harmony.

The English courts have applied this settled doctrine to Soviet decrees dissolving Russian corporations and have held that under these decrees such corporations must be considered as extinct. *Lazard Bros. & Co.* v. *Midland Bank* (1933), A. C. 289, 304–305; *In re Russo Asiatic Bank* (1934), Ch. 720; *Russian & English Bank* v. *Baring Bros. Co., Ltd.* (1934), Ch. 276.

In *United States* v. *Bank of New York & Trust Co.*, 77 F. (2d) 866 (affirmed 296 U. S. 463), the Circuit Court of Appeals for the Second Circuit stated at page 868:

> * * * No one will question the power of the government of the domicile of a corporation to destroy what it has created. *Bank of Augusta* v. *Earle*, 13 Pet. 519, 587; *Head* v. *Providence Ins. Co.*, 2 Cranch 127, 168. When the now recognized Soviet Government issued its decrees to that effect this corporation was dead. *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, *The Greyhound*, 68 F. (2d) 832 (C. C. A. 2). There can be no serious dispute that its property and all its corporate rights in Russia were subject to such disposition as actually took place in accordance with Russian law. The Russian State obviously could, and this record shows that it did, confiscate everything belonging to this corporation within the con-

> fines of Russia. It could, and did, acquire for itself every right the corporation in Russia possessed. It became the corporation there so far as we are now concerned. It had all its property and rights as fully as though the corporation had lawfully assigned them to it before dissolution. To that extent our public policy as to confiscatory decrees, so far as it may be expressed by our courts, is of no moment. When the executive branch recognized the Soviet Government, the judicial branch became bound to recognize the validity of Soviet decrees in Soviet territory from the beginning of the Soviet regime. *Oetjen* v. *Central Leather Co., supra.* See also, *Lazard Bros. & Co.* v. *Midland Bank, Ltd.* (1933), A. C. 289, H. of L., for the rule in England. Consequently we must for present purposes take the Soviet Government to have become to all intents and purposes the Russian insurance corporation in Russia which owned the deposit in New York subject to the fulfillment of the conditions upon which the deposit was made with the New York Superintendent of Insurance.

We submit that these authorities make it clear that the Soviet Government had power to dissolve the Metal Company and to constitute itself as the successor of the Metal Company.

The succession of the Soviet Government was effected by vesting in a particular organ of the Soviet Government the administration of the en-

terprises nationalized by the decree of June 28, 1918 (R. 21), including the Metal Company.

It is well settled law that on the dissolution of a corporation the successor designated by the State of its incorporation obtains title to the corporation's assets, wherever situated. *Relfe* v. *Rundle,* 103 U. S. 222; *Martyne* v. *American Fire Insurance Co.,* 216 N. Y. 183; *Cogliano* v. *Ferguson,* 245 Mass. 364, 139 N. E. 527; *Bockover* v. *Life Association of America,* 77 Va. 85. In the *Restatement of the Law of Conflict of Laws,* this principle is stated as follows (Section 161):

> If a statute of the state of incorporation which is in force at the time of the dissolution of a corporation provides that all its assets shall, upon dissolution, pass to a person designated in the statute, the right of such person to the personal property, wherever situated and whether tangible or intangible, will be recognized and given effect by other states, and the designated person can bring suit in any state upon claims due to the corporation.

We submit that under the principles discussed above the Soviet Government became the successor to the dissolved Metal Company and thereby acquired the right to this bank deposit. It assigned its right to the United States. The question then becomes whether the enforcement of this right may be denied on any principle of public policy.

II

THERE IS NO PUBLIC POLICY WHICH PREVENTS THE ENFORCEMENT OF PETITIONER'S CLAIM

A. *The Public Policy of the United States*

This Court has held that it will give effect to the laws and decrees of foreign governments with respect to property situated in their territories irrespective of whether such decrees are confiscatory. *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Ricaud* v. *American Metal Co.*, 246 U. S. 304. Under these cases it seems clear that this Court will recognize a title to property or rights situated in Russia and nationalized by the Russian *Government.*[2]

The English courts have adopted a rule which, we submit, is the proper rule to be applied herein. In *Luther* v. *Sagor* (1921), 3 K. B. 532, 558–559, it was stated by the Court of Appeal:

> But it appears a serious breach of international comity, if a state is recognized as a

[2] It is immaterial that the United States did not recognize the Russian Government at the date of the passage of the nationalization decrees. Subsequent recognition relates back to the inception of the recognized government and all acts done by it must be considered as having been done by a recognized government. *Underhill* v. *Hernandez*, 168 U. S. 250, 252. In *Oetjen* v. *Central Leather Co.*, *supra*, at 303, this Court stated that—"recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its existence."

> sovereign independent state, to postulate that its legislation is "contrary to essential principles of justice and morality." Such an allegation might well with a susceptible foreign government become a casus belli; and should in my view be the action of the Sovereign through his ministers, and not of the judges in reference to a state which their Sovereign has recognized.

Again, at p. 559:

> I do not feel able to come to the conclusion that the legislation of a state recognized by my Sovereign as an independent sovereign state is so contrary to moral principle that the judges ought not to recognize it. The responsibility for recognition or nonrecognition with the consequences of each rests on the political advisers of the Sovereign and not on the judges.

The decisions of this Court, above cited, are in accord with the English principle. In no case has this Court declared any rule of public policy which would prevent the enforcement of petitioner's right herein.

The right claimed by the United States was acquired by virtue of an assignment forming part of an international agreement. That assignment stated that it was made "preparatory to a final settlement of the claims and counterclaims" between the two governments and the claims of their nationals (R. 25). The assignment was procured for the benefit of the United States Gov-

ernment and United States citizens. It can not be gainsaid that the public policy of the United States favors the protection of the rights, pecuniary or otherwise, of its own citizens. It must follow therefore, that the public policy of the United States accords with the enforcement of the right acquired under this assignment.

By the act of recognition of the Soviet Government and the acceptance of the Litvinoff assignment, the Executive has declared in favor of the enforceability of the right herein asserted. This declaration, we submit, the Executive is fully entitled to make when exercising his legitimate functions of recognizing a foreign government and arranging with it for the settlement of outstanding international claims. As this Court has recently said, with reference to international affairs:

> In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation.

and that in the President is vested—

> the very delicate, plenary, and exclusive power * * * as the sole organ of the federal government in the field of international relations.
>
> *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided Dec. 21, 1936.

Cf. *Doe* v. *Braden*, 16 How. 635, 636; *Terlinden* v. *Ames*, 184 U. S. 270, 290.

This case does not present the question as to whether the Executive may override a pre-existing national public policy. We have shown that there is no national policy opposed to the enforcement of this right. On the other hand, there are compelling reasons in favor of its enforcement, since enforcement is sought for the purpose of bringing about a settlement of the claims of our citizens against a foreign government.

The court below intimated that the Fifth Amendment constituted a barrier to the enforcement of this claim of the United States (R. 25). In our view, it has no application here. The Fifth Amendment applies, in terms, only where there is a taking by the United States. Here there is no taking from the Belmont firm, which is under an obligation to repay the amount of the deposit. The bank certainly can not set up the claim of a violation of the Fifth Amendment where its property is not involved. *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571, 576; *Erie R. R. Co.* v. *Williams,* 233 U. S. 685, 697. Nor can the Metal Company complain, for the taking from it was by its own sovereign, the Soviet Government.

The court below cited *Russian Volunteer Fleet* v. *United States,* 282 U. S. 481, as authority for the proposition that the Fifth Amendment was here applicable. We do not perceive the relevance of that case. The issue there was as to the jurisdic-

tion of the Court of Claims to entertain an action to recover compensation for the requisitioning by the United States under the Emergency Shipping Act of June 15, 1917, of certain contracts for the building of vessels. It was urged that since American citizens might not sue for similar compensation in the courts of the Soviet Union on account of non-recognition of the Soviet Union by the United States, Section 155 of the Judicial Code prevented any action by the Russian Volunteer Fleet in the Court of Claims. This Court held that the authority to sue in the Court of Claims for such compensation conferred by the Emergency Shipping Act of June 15, 1917, being express authority, rendered Section 155 of the Judicial Code inapplicable to this particular action and that hence an action might be brought by the Russian Volunteer Fleet in the Court of Claims. The discussion of the Fifth Amendment contained in the opinion was directed to pointing out that the Volunteer Fleet was entitled to receive compensation for property taken by the United States and that the pertinent statutes were not to be so construed as to impute to Congress an intention to deny or to postpone indefinitely the payment of compensation for the taking.

Since here there is no taking by the United States, either from the bank or from the Metal Company, the discussion in the Volunteer Fleet opinion has no applicability. As the Court pointed

out in that case the question there presented was "not one of a claim advanced by or on behalf of a foreign government or regime, but is simply one of compensating an owner of property taken by the United States" (282 U. S. at 492).

B. The Public Policy of New York

There is no rule of public policy in New York which denies enforcement to a right acquired in Russia, under the Russian nationalization decrees. On the contrary, the New York courts have expressly held that the Russian nationalization decrees transferring the ownership of tangible property situated in Russia will be given effect, even though the decrees operated by way of confiscation. *Salimoff* v. *Standard Oil Co.*, 262 N. Y. 220. They have made the same ruling in the case of intangible property located in Russia. *Dougherty* v. *Equitable Life Assurance Soc.*, 266 N. Y. 71. In that case it was pointed out that there is no distinction between tangible and intangible property as concerns giving effect to a decree confiscating property or extinguishing a right. The New York court there said (p. 87):

> The plaintiffs seek to make a distinction between the seizure of tangible property (*Salimoff* and *Sagor* cases) and the disposition and canceling of rights to intangible property. We can see no distinction in this instance.

The scheme of nationalization of property of Russian corporations enacted in the basic decree of June 28, 1918, was an essential feature in the establishment of the Soviet Government, upon the theory of national or public rather than private ownership of the nation's resources. In other words, these decrees of nationalization were part of the Soviet plan of national economy. The fact that these decrees indicate a policy different from our own does not mean that they violate our domestic public policy. This was clearly pointed out by the Court of Appeals of New York in *Dougherty* v. *Equitable Life Assurance Society*, *supra*, wherein it stated as follows (p. 83):

> In Russia, where all these insured were, with one or two exceptions, these decrees were laws to be obeyed. They were the laws of their government. As to them the Soviet Republic was no body of bandits, confiscating property, but an existing government, carrying out new theories of insurance. If the Russian people, under their Soviet form of government, determined to abolish all private insurance for their citizens and establish a system of social protection by the State, that was their affair, not ours; and however objectionable we may consider the monopolization of all business, including insurance and banking, and the conduct of it thereafter by the government, we at least must admit that other peoples can try the experiment if they desire.

It follows that the principle of the cases cited above is herein applicable, and that the right which the Russian Government validly acquired in Russia, pursuant to Russian law and thereafter assigned to the United States, will be enforced in our courts.

The court below stated that the New York courts "have expressly refused to recognize the Russian government's title to such a debt based on the confiscatory decree in question" (R. 24), citing *Vladikavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369. We submit that the case cited does not support that statement. That was a suit by a Russian corporation to recover a deposit with a New York bank. The answer of the bank set up two defenses: (1) that a former Russian government had an interest in the fund because certain deposits had been made by this Government to the credit of the Railway Company; and (2) that the corporation had been nationalized and that consequently its directors no longer held office and therefore had no authority to make the claim. The court struck out the first defense on the ground that "the mere assertion by a defendant bank that a deposit was made in an account of a plaintiff by a third party does not justify a bank in refusing to pay over to the party in whose name the fund is deposited" (p. 374). This first defense did not involve any question with respect to the nationalization decrees.

With reference to the second defense the court stated that the question was "shall the law compel a debtor in this State to pay its debt or permit it to hold the property of its creditor indefinitely?" (p. 378). The court held that while the corporation had ceased to exist in Russia, the nationalization decrees would not be given effect to deprive the corporation of legal existence in New York, and hence the surviving directors could sue. There was no refusal to recognize the Soviet Government's title based on nationalization decrees, for no such question was presented. Indeed the court pointed out that "Nowhere in the answer does the defendant plead the Russian law or make any claim under the law of Russia but expressly bases its defenses upon the law of this state" (pp. 376–377).

In the course of its opinion the New York court stated (pp. 378–379):

> It is hardly necessary to state that the arbitrary dissolution of a corporation, the confiscation of its assets and the repudiation of its obligations by decrees, is contrary to our public policy and shocking to our sense of justice and equity. That the confiscation decree in question, clearly contrary to our public policy, was enacted by a government recognized by us, affords no controlling reason why it should be enforced in our courts.

This language has been relied upon as laying down a general rule that New York public policy forbids

giving effect to foreign confiscatory decrees. So construed, it would mean that the *Vladikavkazsky* case is contrary both to the *Salimoff* case which preceded it and to the *Dougherty* case which was decided subsequently, in both of which cases the same court upheld defenses arising out of such decrees. The three cases can be harmonized only by confining the language of the *Vladikavkazsky* case to the precise issue there presented.

In Section A of Point I, *supra,* we have shown that the obligation of the Belmont firm to pay may be governed by New York law, but that the right to receive the amount of the deposit was governed by Russian law. The *Vladikavkazsky* case holds that the bank is under an obligation to pay. But whether payment is to be made to the nationalized corporation or to the Soviet Government is a question governed by Russian law. True, the *Vladikavkazsky* case held that payments should be made to the corporation. But there was no issue there as to whether payment should be made to someone else. The New York Court of Appeals did not there state, and has not said that as between the Soviet Government and the corporation the latter must prevail. We submit that had that issue been presented the court would have been required, under the *Salimoff* and *Oetjen* cases, to recognize that the right to receive had been validly acquired by the Soviet Government and to enforce that right.

C. *Section 977-b of the New York Civil Practice Act*

On June 8, 1936, subsequent to the commencement of this suit, the New York Legislature enacted Section 977-b of the New York Civil Practice Act, Laws of 1936, c. 917 (printed in the Appendix, *infra*, pp. 56–65).

Briefly this statute provides that any creditor or stockholder of a foreign corporation having assets in New York and which has been dissolved, liquidated, or nationalized, or the charter of which has been suspended or revoked, or which has ceased doing business may apply for the appointment of a receiver.[*] Title to all assets of the corporation within New York vests in the receiver immediately upon appointment. The existence of the corporation and all causes of action by or against it are not to be deemed ended or affected by the nationalization or dissolution of the corporation. A receiver may be substituted for the corporation in any action in the state or Federal courts and may revive any action which shall have abated. A re-

[*] On June 25, 1936, a receiver was appointed for the Metal Company under this statute at the instance of a stockholder. We understand that this receiver has served a demand on the executors of August Belmont for the payment to him of the deposit in question, but that the executors have not complied with this demand. None of these facts, however, appear in this record.

ceiver appointed in accordance with the statute is to proceed to reduce all assets to possession. Creditors and stockholders may file claims with the receiver. Upon settlement of the receiver's account the court must direct payment to creditors and stockholders in accordance with a designated priority. The time between dissolution of the corporation and the appointment of a receiver, plus three years after such appointment, is not to be counted in determining whether any action by or against the corporation or receiver has been barred by any statute of limitations.

The court below cited this statute in connection with its statement that "it is contrary to the public policy of the state of New York to enforce confiscatory decrees with respect to property located here at the date of the decree" (R. 24). We have already shown that the right to receive the amount of the deposit was not "located here", but was situated in Russia.

Presumably the court had in mind the concluding sentence of Sec. 19 of the statute which reads:

> Any receiver appointed pursuant to the provisions of this section may be substituted for such corporation in any action or proceeding pending in the courts of the state or of the United States to which such corporation is a party and may revive any action which shall have heretofore or which may hereafter have abated, and such liquidation, dissolution, nationalization, expira-

> tion of its existence, or repeal, suspension, revocation, or annulment of its charter or organic law in the country of its domicile shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands, or choses in action of such corporation within the state or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business in the state.

The sentence quoted above is so phrased as to make it clear that the provision against according effectiveness or validity to nationalization decrees comes into operation only in those cases in which a receiver brings suit or has been substituted for the corporation in a pending action. Consequently this particular provision is not applicable to an action such as the one at bar where neither the receiver nor the corporation is a party.

Furthermore, it is our contention that this statute, even if intended to be applicable herein, cannot operate to defeat the enforcement of petitioner's right.

If this statute, apart from its procedural provisions, is to be considered as merely a reiteration of the rule of public policy laid down in the decisions of the New York Court of Appeals, then, as we have shown above, that rule does not prevent the enforcement of petitioner's right. See Section B of this point, *supra,* pp. 37–41.

If this statute is to be considered as extending the rule laid down in the decisions, then it would have the effect of divesting the United States of a right which had been acquired prior to the enactment of the statute. At all times prior to the enactment of the statute the Belmont firm was under a contractual obligation to repay the amount of the deposit on the demand of the Metal Company or of its transferee. The right to receive payment was a property right protected by the impairment of contracts clause of the Constitution (Art. I, cl. 10) and by the due process clause of the Fourteenth Amendment to the Constitution. *Coombes* v. *Getz*, 285 U. S. 434. There suit was brought by creditors of a corporation against a debtor to enforce a contract debt. The cause of action was based upon a provision of the State Constitution in force when the action was instituted. While an appeal was pending from a dismissal of the complaint this Constitutional provision was repealed. It was urged that this repeal destroyed the cause of action unless it had previously been reduced to final judgment. This Court held that the cause of action was contractual and not statutory, and hence that it was a property right protected by the Constitution. It stated at p. 442:

> The right of this petitioner to enforce respondent's liability had become fully perfected and vested prior to the repeal of the liability provision. His cause of action was

> not *purely* statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but it did not and could not destroy or impair the previously vested right of the creditor (which in every sense was a property right, *Ettor* v. *Tacoma*, 228 U. S. 148, 156; *Pritchard* v. *Norton*, 106 U. S. 124, 132) to enforce his cause of action upon the contract.

See also *Coolidge* v. *Long*, 282 U. S. 582, and *Pritchard* v. *Norton*, 106 U. S. 124.

According to this fundamental principle the right to receive the deposit cannot be defeated. If, as we contend, the United States acquired a valid right through the Litvinov assignment, that right was acquired on November 16, 1933, prior to the enactment of this statute, and could not thereafter be divested.

The court below also construed the statute as providing that "the title of the confiscating government is not to be recognized at least until after the expiration of the period within which creditors or stockholders may claim it" (R. 25). We find no provision of the statute justifying such a construction. If, however, the statute may properly be construed as postponing enforcement of peti-

tioner's claim for a certain period, it does not follow that the complaint should have been dismissed. This record presents only the question as to whether the complaint sets forth a valid cause of action. If this Court should reverse the judgment of the court below, the action would take its normal course in the District Court. There respondents could set up the New York statute in their answer, and, if the validity of the statute were upheld and the statute deemed applicable to this case, the enforcement of the claim of the United States might then be postponed for the period designated by the statute. Consequently, a construction of the statute as a stay does not affect the question presented by this record, namely, whether the complaint states a valid cause of action.

In *Cummings* v. *Deutsche Bank,* No. 254, decided by this Court February 1, 1937, a Congressional Resolution directed that deliveries of property under the War Claims Act should be postponed so long as Germany remained in arrears with respect to certain obligations. It was held that this Resolution did not deprive the courts of jurisdiction to entertain a suit by an alien against the Alien Property Custodian and the Court went on to determine the rights of the parties. The Court said:

> The measure was adopted because of Germany's default which, as indicated by the

> context, was assumed not to be permanent. It was intended only temporarily to postpone final disposition of the seized property, merely to stay deliveries whether directed by administrative order or judgment of a court. Claimants may have deliveries whenever Germany ceases to be in arrears. Fulfillment of her promises will end the restraint imposed by the resolution. * * * Clearly the trial court had jurisdiction to entertain the complaint.

D. The application of New York public policy in Federal courts, and to matters of national concern

Even if it be conceded for the purposes of argument that the public policy of New York is opposed to the enforcement of this right, it is submitted that the public policy of an individual State can not prevent its enforcement in the Federal courts.

It is well settled that a validly acquired right can not be denied enforcement in the Federal courts even where sitting in a State which prohibits the enforcement of the right in its own courts. Even where a State denies enforcement in its own courts to a contract made within its own borders, the Federal courts will still enforce the contract, provided that state law does not make the contract void. *David Lupton's Sons Co.* v. *Automobile Club of America,* 225 U. S. 489. Similarly, a right validly aequired under a foreign sovereignty will be en-

forced in a Federal court even though not enforceable in the state court. *Suydam* v. *Broadnax*, 14 Pet. 67; *Union Bank* v. *Jolly's Admrs.*, 18 How. 503, 507. It is immaterial that the state court's refusal to enforce the right is grounded on local public policy. *Boyce* v. *Tabb*, 18 Wall. 546; *Dexter* v. *Edmands*, 89 Fed. 467 (C. C. Mass.).[4]

There are special reasons why the Federal court should not follow a local public policy in a case such as this, involving the international relations of the United States. It must be remembered that the Litvinov assignment constitutes an essential part of the negotiations looking toward the settlement of the claims of the United States and its nationals against the Soviet Government and its nationals. The settlement of international claims is a matter clearly within the exclusive competence of the Federal Government. This Court has recently stated that where matters of foreign relations are concerned the States have not and never have had any

---

[4] Even where a rule of local public policy makes a contract void, this Court has held that the Federal courts are not bound to follow that rule where the question is one of general law. In *B. & W. Taxicab Co.* v. *B. & Y. Taxicab Co.*, 276 U. S. 518, this Court in holding that a rule of local public policy which made a contract void would not be followed in the Federal courts, where a question of general law was involved, said (p. 528): "Care is to be observed lest the doctrine that a contract is void as against public policy be unreasonably extended."

power. *United States* v. *Curtiss-Wright Export Corporation,* No. 98, decided December 21, 1936.

Prior to the recognition of the Soviet Government and the assignment to the United States of claims arising out of the nationalization decrees, the individual States were free to apply their own policy as to whether rights acquired by these decrees should be enforced. However, after the recognition and the Litvinov assignment, the effectiveness of these decrees, with respect to property covered by the assignment, became a matter of national and international concern. Only the public policy of the United States, and not that of any individual State, would become operative herein. The proper exercise by the Executive of his constitutional power in the field of international relations would be seriously impaired if each of the forty-eight States were permitted to impose its own local policy with respect to matters which have been made the subject of an international agreement.

The assignment bears evidence on its face that the question of the enforcement of the right which the Soviet Government assigned to the United States is closely connected with the settlement of outstanding international claims. The statement of this Court in *Ingenohl* v. *Olsen & Co.,* 273 U. S. 541, 544, is pertinent here:

> It is not necessary to consider whether the section of the Code of Civil Procedure re-

> lied upon was within the power of the Philippine Commission to pass. In any event as interpreted it involved delicate considerations of international relations and therefore we should not hold ourselves bound to that deference that we show to the judgment of the local Court upon matters of only local concern.

In *Doe* v. *Braden,* 16 How. 635, Chief Justice Taney stated, at page 656:

> * * * it would be impossible for the executive department of the government to conduct our foreign relations with any advantage to the country, and fulfill the duties which the Constitution has imposed upon it, if every court in the country was authorized to inquire and decide whether the person who ratified the treaty on behalf of a foreign nation had the power, by its constitution and laws, to make the engagements into which he entered.

To subject the enforcement of the right acquired by the United States under the agreement to the varying and uncertain policies of each of the States would doubtless defeat any attempt to arrive at a solution of these international questions.

CONCLUSION

For all of the reasons set forth above, it is respectfully submitted that the judgment of the court below should be reversed.

STANLEY REED,
Solicitor General.
W. W. SCOTT,
Acting Assistant Attorney General.
DAVID E. HUDSON,
A. H. FELLER,
ALBERT LEVITT,
Special Assistants to the Attorney General.
HENRY MUNROE,
Special Attorney.
PAUL A. SWEENEY,
Attorney.

FEBRUARY 1937

APPENDIX

I

AGREEMENT CONCLUDED NOVEMBER 16, 1933, BETWEEN THE PRESIDENT OF THE UNITED STATES AND THE PEOPLE'S COMMISSAR FOR FOREIGN AFFAIRS OF THE UNION OF SOVIET SOCIALIST REPUBLICS

WASHINGTON, *November 16, 1933.*

MY DEAR MR. PRESIDENT: Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by

the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interest therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

I am, my dear Mr. President,

Very sincerely yours,

MAXIM M. LITVINOV,

People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics.

MR. FRANKLIN D. ROOSEVELT,

President of the United States of America,
The White House.

THE WHITE HOUSE,
Washington, November 16, 1933.

MY DEAR MR. LITVINOV: I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet

Socialist Republics and the United States of America and the claims of the their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

"(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or

"(b) acts done or settlements made by or with the Government of the United States or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. MAXIM M. LITVINOV,

People's Commissar for Foreign Affairs,

Union of Soviet Socialist Republics.

II

SECTION 977–B OF THE CIVIL PRACTICE ACT OF NEW YORK

CHAPTER 917

AN ACT to amend the civil practice act, in relation to providing a method for the payment of claims against certain corporations

[Became a law June 8, 1936, with the approval of the Governor. Passed, three-fifths being present]

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The civil practice act is hereby amended by inserting therein a new section, to be section nine hundred and seventy-seven-b, to read as follows:

§ 977–b. *Receivers to liquidate local assets of foreign corporations.*—1. An action may be insti-

tuted in the supreme court for the appointment of a receiver of the assets in this state of a foreign corporation, whenever such foreign corporation has assets or property of any kind whatsoever, tangible or intangible, within the state of New York, and (a) it has heretofore been or is hereafter dissolved, liquidated or nationalized or (b) its charter or organic law has heretofore been or hereafter is suspended, repealed, revoked or annulled, or (c) it has heretofore ceased or hereafter ceases to do business, whether voluntarily or otherwise or by reason of the expiration of the term of its existence or by revocation or annulment of its organic law or by dissolution or otherwise.

2. Such action may be commenced by any domestic or foreign creditor, judgment creditor or attachment creditor or stockholder of such corporation, or by any plaintiff on whose behalf a warrant of attachment against the property of such corporation has heretofore been or may hereafter be issued.

3. Service of the summons in such action may be made personally within the state of New York, by delivery of the same to any officer or director of the corporation, or by publication pursuant to an order obtained as hereinafter provided.

4. Upon an affidavit reciting that personal service of the summons cannot be effected within the state of New York with due diligence and reciting and upon a summons and verified complaint alleging that the defendant is a foreign corporation and has or may have or may be entitled to assets, credits, choses in action or other property, tangible or intangible within the state and that such corporation has been dissolved, nationalized, or that

its charter or organic law has been suspended, repealed, annulled or revoked, or that it has ceased to do business, plaintiff may apply, without notice, to the supreme court or any judge or justice thereof for the appointment of a temporary receiver pending the determination of the action and the court must thereupon appoint such receiver who shall, from time to time, file such undertakings as the court may direct and shall take, receive and reduce to his possession any and all assets, credits, choses in action and property, tangible and intangible, in the state of New York of the said foreign corporation and hold the same until the further order of the court.

5. An order directing service by publication of the summons shall be made upon application of a plaintiff in any action brought pursuant to this section and must be founded upon a verified complaint, containing the allegations set forth in subdivision four hereof, and upon an affidavit reciting that personal service of the summons cannot be effected within the state with due diligence and that a temporary receiver of its property within the state of New York has been appointed pursuant to this section in such action and that a copy of the order appointing the receiver has been served personally by or on behalf of such receiver upon a person, firm or corporation holding property, tangible or intangible, of the said foreign corporation, or against whom a claim or demand in favor of such foreign corporation exists and that demand therefor has been made upon such person, firm or corporation by or on behalf of such receiver.

6. The order directing service of the summons shall require the publication thereof in two news-

papers published in the state of New York in the English language at least once a week for six successive weeks, and shall also require the mailing on or before the date of the first publication of a copy of the summons, complaint and order to the corporation at its last known principal or head office in the state or country of its domicile.

7. In an action pursuant to this section the summons must be served personally or an order directing service thereof by publication must be obtained and the first publication thereof made within sixty days after the appointment of the temporary receiver, and if served by publication, the service must be made complete by the continuance thereof.

8. If served by publication, service of the summons shall be deemed complete ten days after the date of the last publication. The action shall be deemed commenced upon the issuance of the summons. The order appointing the receiver and the papers upon which the same is granted shall be filed in the office of the clerk of the court where the action is triable within ten days after the order is made.

9. In the event an answer is interposed on behalf of the defendant, any party to the action may at any time apply for and shall be entitled to an order setting the case down for trial on a day certain as a preferred cause.

10. In the event that the defendant defaults in answering, or if after a trial the court is satisfied that the defendant has ceased to do business by reason of any thing or matter whatsoever, or that it has been dissolved, liquidated or nationalized, or its charter or organic law has been suspended, repealed, revoked or annulled, the court must there-

upon direct judgment, making permanent the appointment of the temporary receiver appointed pursuant to subdivision four hereof and directing the receiver to liquidate the assets, credits, choses in action and property, tangible and intangible, in the state of New York of the said defendant, in the manner herein provided for.

11. Such judgment shall direct that the receiver shall, as speedily as possible, reduce to cash all the assets, credits, choses in action, and other property, tangible and intangible, of the said defendant which it may have or be entitled to or may be entitled to claim or to receive in the state of New York, and shall direct said receiver to give notice to all creditors and other persons interested in the said defendant, in such manner as the court may direct and requiring them to present to the receiver proof of their claims against or interests in the said defendant within a time limited in the said judgment, which time shall not be less than sixty days after the giving of such notice. Proofs of claim shall set forth the address of the claimant and the name and address of claimant's attorney, if any.

12. Any receiver appointed pursuant to this section shall have all the powers and duties, in addition to those herein provided for, as are possessed by and conferred upon receivers and trustees by the laws of the state of New York.

13. After the expiration of the time limited by the judgment for the filing of claims with the receiver, the receiver shall prepare and submit to the court a detailed account showing the assets received, the disposition thereof and the value of any claims or assets which have not theretofore been reduced to cash, with a full description of each,

and a statement showing the name and address of each and every claimant and the name and address of his attorney, if any, and the amount and the nature of the claim, and a statement of the allowance or disallowance thereof, and a statement of the costs and expense of the action and of the receivership.

14. Notice of the filing of such account shall thereupon be given to all persons or their attorneys who have appeared in the action or filed claims with the receiver, by mail to the address set forth in the proof of claim or notice of appearance together with notice that on a date specified therein not less than thirty days thereafter, an application will be made to the court for settlement of the receiver's account and for partial distribution in the event all the assets are not reduced to cash and for full distribution in the event the assets have theretofore been reduced to cash, together with notice of the amounts which have been paid or will be applied for as costs, expenses, commissions and allowances.

15. Upon the return date of such application, or at such other time fixed by the court, the parties and claimants may be heard and proof taken and the receiver's account settled by the court or by a referee appointed for that purpose by the court.

16. Upon settlement of the receiver's account, the court must direct payment in the following order and manner: a. The costs and expenses of the action and of the receivership and the commissions and allowances and attorneys' fees in connection therewith shall first be paid, and if the court is satisfied that the action has been of benefit

to the creditors of the said defendant it may allow the plaintiff his reasonable expenses including attorneys' fees in connection with such action.

b. The allowed claims, if any, of creditors with valid attachments issued out of any court in the state prior to the commencement of an action pursuant to this section, shall then be paid in the order of their priority. Attachments issued after the commencement of an action for the appointment of a receiver pursuant to this section shall be entitled to no priority by reason thereof.

c. The allowed claims which originally accrued or arose, wholly or partly, in favor of residents of the state of New York and the allowed claims based on causes of action which accrued or arose in the state of New York shall then be paid.

d. The allowed claims of all other creditors of the corporation shall then be paid.

Any surplus remaining after making all of the aforesaid payments in the order mentioned shall then be paid to the stockholders of the corporation who have proved claims as such pro rata in accordance with their stockholdings, or in the discretion of the court, to the receiver or liquidator, if any, appointed in the domicile of the corporation, provided such receiver or liquidator has proved his right thereto.

17. Thereafter and as often as practicable the receiver shall file further accounts and give notice thereof as provided in subdivision fourteen hereof, until the assets are entirely liquidated and distributed as hereinbefore provided.

18. The time between the cessation of business by the corporation or its dissolution or nationalization or the suspension, repeal, revocation or annul-

ment of its charter or organic law, and the appointment of a receiver in this state pursuant to this section, whichever time is longer, plus three years after such appointment, shall not be a part of the time limited by domestic or foreign law for the commencement of an action by or on behalf of or against said corporation or by or against said receiver, whether or not said action has heretofore been barred by any statute of limitations of this state or of any other state or country.

19. Title to all assets, credits, choses in action, and property, tangible and intangible, of any and every kind whatsoever, which such corporation owns, is entitled to or may be entitled to claim or receive within the state of New York shall immediately vest in the receiver upon the making of the order appointing him. The existence of such corporation and causes of action by or against such corporation existing at the time of its liquidation, dissolution, nationalization, expiration of its existence, repeal, suspension, revocation or annulment of its charter or organic law, or arising thereafter, shall not be deemed ended, abated or affected thereby, nor shall actions brought by or against such corporation or a receiver appointed hereunder be deemed to have ended or abated or to have been affected by reason of such liquidation, dissolution, nationalization, expiration of its existence or suspension, repeal, revocation or annulment of its charter or organic law. This provision shall apply to all property, tangible and intangible, debts, demands, and choses in action of such corporation within the state of New York, and to all litigation heretofore or hereafter brought in the courts of the state or of the United States by or against the

corporation or a receiver of said corporation appointed pursuant to the provisions of this section. Any receiver appointed pursuant to the provisions of this section may be substituted for such corporation in any action or proceeding pending in the courts of the state or of the United States to which such corporation is a party and may revive any action which shall have heretofore or which may hereafter have abated, and such liquidation, dissolution, nationalization, expiration of its existence, or repeal, suspension, revocation or annulment of its charter or organic law in the country of its domicile shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands or choses in action of such corporation within the state or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business in the state.

20. Any receiver appointed pursuant to this section shall be deemed to have obtained possession of all assets, credits, choses in action and property, tangible and intangible, of the said foreign corporation, by causing to be delivered to and left with the person, firm or corporation holding the same or against whom the claim or demand exists, a copy of the order appointing said receiver together with a demand therefor.

21. If any receiver or trustee has heretofore been appointed in this state for such corporation or its property in any action or proceeding, either before or supplementary to judgment, otherwise than in an action brought pursuant to this section, such receiver or trustee may be appointed or con-

tinued as the receiver in any action brought pursuant to the provisions of this section.

22. The appointment of a receiver pursuant to this section or the pendency of an action for the appointment of such receiver, shall until such receiver shall be discharged or until such action shall have terminated, be a bar to any subsequent application or action for the appointment of a receiver of the assets of the same corporation.

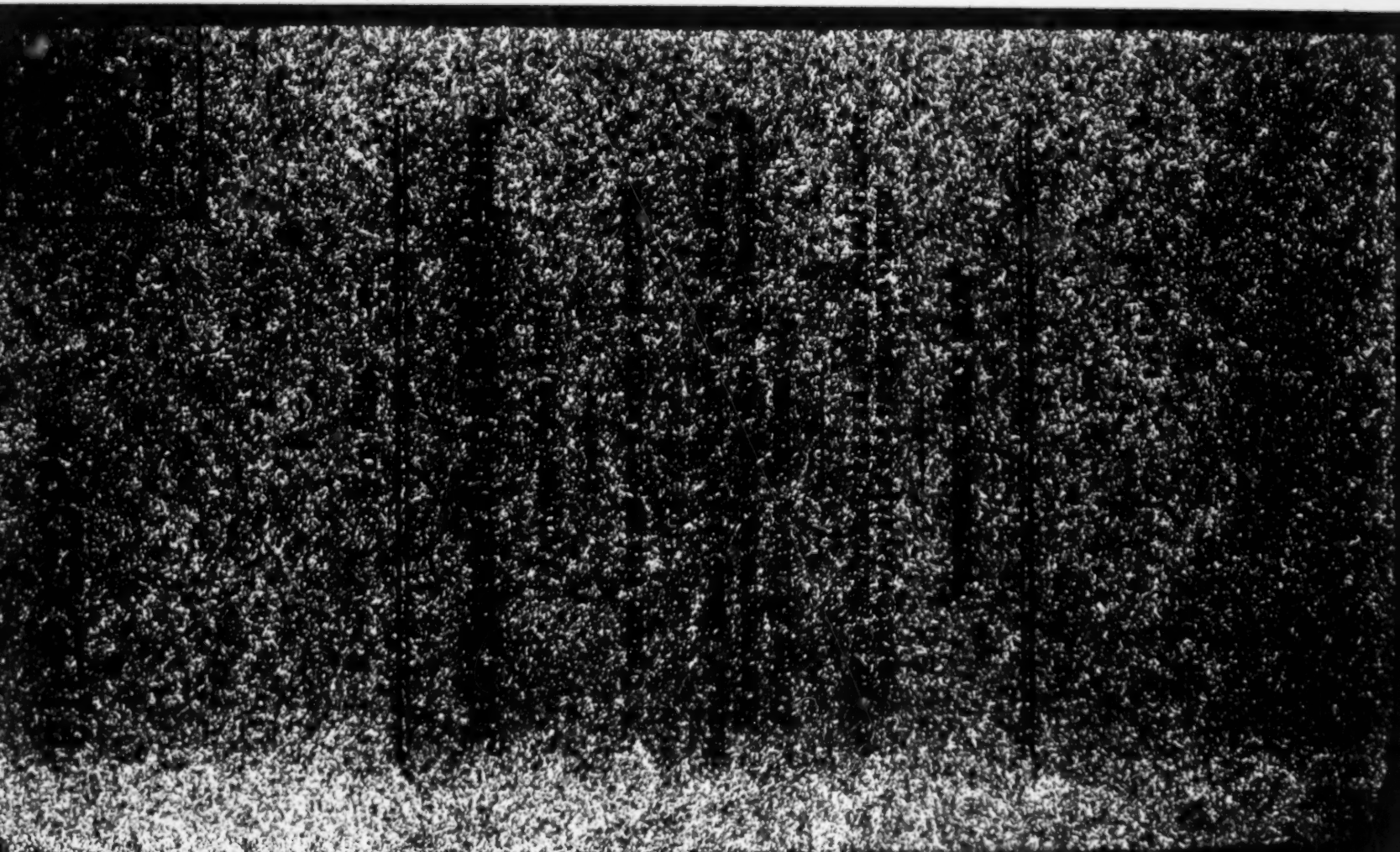
23. An action must be commenced under this section within three years from the effective date of this act or within three years from the discovery by the plaintiff or his predecessor in interest, of any asset of said corporation in the state of New York, whichever date is the later.

24. The terms "property" and "assets" as used in this section shall be deemed to include, but shall not to be limited to, claims against persons, firms or corporations residing, sojourning, or doing business in the state.

25. If any of the provisions of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared separable.

§ 2. This act shall take effect immediately.

U. S. GOVERNMENT PRINTING OFFICE: 1937



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127830—37——1

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 532

UNITED STATES OF AMERICA, PETITIONER

v.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF

THIS CASE INVOLVES THE FOREIGN RELATIONS OF THE UNITED STATES, AND LOCAL PUBLIC POLICY CAN NOT CONTROL

The fundamental error which pervades respondents' brief is their assumption that this case is on the same plane as an ordinary assignment between individuals, involving nothing more than ordinary private law principles. Respondents' brief (p. 47) states that "This case does not involve international relations of the United States in their true sphere." That is precisely what this case does

involve. For that reason this case is different from any case which has preceded it.[1]

Because of respondents' effort to limit the scope and meaning of this case, and in order to give the Court a true and complete picture of the negotiations leading up to and following this assignment, the Government submits for the convenience of the Court the official document of the State Department entitled "Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics" (Eastern European Series, No. 1, 1933), hereafter cited as "Official Document."

The following extracts are particularly to be noted:

In President Roosevelt's letter to President Kalinin, dated October 10, 1933 (Off. doc., p. 1), he speaks of—

> the desirability of an effort to end the present abnormal relations between the hundred and twenty-five million people of the United States and the hundred and sixty million people of Russia.

and therefore invited President Kalinin to designate representatives—

> to explore with me personally all questions outstanding between our countries.

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[1] Except the case of *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, which was decided solely on jurisdictional grounds.

In President Kalinin's acceptance of this invitation, dated October 17, 1933 (Off. doc., pp. 1 and 2), he stated in part as follows:

> * * * the abnormal situation, to which you correctly refer in your message, has an unfavorable effect not only on the interests of the two states concerned, but also on the general international situation, increasing the element of disquiet, complicating the process of consolidating world peace and encouraging forces tending to disturb that peace.

Thereafter negotiations took place. On November 16, 1933, President Roosevelt, in a letter to Mr. Litvinov (Off. doc., p. 4), stated that—

> I am very happy to inform you that as a result of our conversations the Government of the United States has decided to establish normal diplomatic relations with the Government of the Union of Soviet Socialist Republics and to exchange ambassadors.

On the same day, Mr. Litvinov informed President Roosevelt that the Soviet Government agreed that, "preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals", the Soviet Government would not take any further steps to recover "amounts admitted to be due or that may be found to be

due it, as the successor of prior Governments of Russia, or otherwise, from American nationals", and thereby released and assigned all such amounts to the Government of the United States, the Soviet Government "to be duly notified in ea n case of any amount realized by the Government of the United States from such release and assignment."

The assignment was on the same day accepted by President Roosevelt in his letter to Mr. Litvinov (Off. doc., p. 14).

In addition to the aforesaid assignment the Soviet Government, on the same day, agreed—

> that it will waive any and all claims of whatsoever character arising out of activities of military forces of the United States in Siberia, or assistance to military forces in Siberia subsequent to January 1, 1918, and that such claims shall be regarded as finally settled and disposed of by this agreement.

On the same day, President Roosevelt and Mr. Litvinov issued a joint statement to the following effect:

> In addition to the agreements which we have signed today, there has taken place an exchange of views with regard to methods of settling all outstanding questions of indebtedness and claims that permits us to hope for a speedy and satisfactory solution of these questions which both our Governments desire to have out of the way as soon as possible.

On November 18, 1933, Secretary Hull stated that (Off. doc., p. 18):

> the peoples of the United States and Russia, after a frank exchange of views at Washington, have resumed normal relations * * *. The badly confused world situation will be improved by this natural and timely step * * *.

On November 17, 1933, the Acting Secretary of State Phillips issued circular instructions to all American diplomatic missions (Off. doc., p. 19), stating in part as follows:

> Following an exchange of communications between the President and the Commissar for Foreign Affairs of the Union of Soviet Socialist Republics, covering outstanding questions in the relations between the United States and the Soviet Union and the arrival at an understanding with respect to methods of settling the question of debts and claims, the President communicated to Mr. Litvinov in a note dated November 16, 1933, the decision of the Government of the United States to establish diplomatic relations with the Soviet Union.

On November 22, 1933, Mr. Litvinov wrote to President Roosevelt (Off. doc., pp. 19 and 20), stating that—

> I avail myself of this opportunity to express once more my firm conviction that the official linking of our two countries by the

> exchange of notes between you, Mr. President, and myself will be of great benefit to our two countries and will also be conducive to the strengthening and preservation of peace between nations towards which our countries are sincerely striving. I believe that their joint efforts will add a creative factor in international affairs which will be beneficial to mankind.

President Roosevelt replied to Mr. Litvinov on November 23 (Off. doc., p. 20), in part, as follows:

> I am profoundly gratified that our conversations should have resulted in the restoration of normal relations between our peoples and I trust that these relations will grow closer and more intimate with each passing year. The cooperation of our governments in the great work of preserving peace should be the corner stone of an enduring friendship.

It needs no argument to demonstrate, for it clearly appears in these notes, separately and collectively, that the two governments intended thereby to initiate the settlement of the claims and counterclaims of the two governments and their nationals. It is well known that these claims constituted the outstanding dispute between the two governments.

In the Annual Report of the Secretary of the Treasury on the State of the Finances for Fiscal Year Ended June 30, 1936 (75th Cong., 1st Sess., House Document No. 5), at page 470, the total in-

debtedness of the Russian Government to the United States, with accrued and unpaid interest thereon, as of November 15, 1936, is stated to be $366,101,897.85. In addition to that indebtedness, it is understood that citizens of the United States have private claims against the Russian Government to the extent of approximately $500,000,000. The total indebtedness of the Russian Government to the United States Government and United States citizens is, therefore, in the neighborhood of perhaps a billion dollars.

The friendly relations between the two great nations were for fifteen years imperilled by these claims. Consequently the President of the United States invited the discussions which culminated in this agreement and the recognition by the United States Government of the Government of the Union Soviet Socialist Republics. It was these negotiations, of which this agreement constituted an essential part, which brought about the establishment of friendly relations and intercourse between one great nation of 125,000,000 people and another great nation of 160,000,000 people—one of the outstanding international events of recent history.

The court below treated this entire matter as though it was nothing more than an ordinary dispute between two private parties, and thus the respondents seek to have this Court treat it.

This case is not on the plane of an ordinary private law transaction. We are dealing with rela-

tions and agreements between two sovereign governments. Different considerations are, therefore, applicable. This case is particularly one of public law, and calls for the rule of broadest construction and liberality.

There is involved herein not merely the right of the United States, but also the duty to discharge an international obligation which it has assumed, an obligation of good faith in the execution of an engagement to settle "all questions outstanding between our countries", and particularly "all outstanding questions of indebtedness and claims." In an effort to achieve that result the two great nations entered into this agreement whereby the Soviet Government made the assignment herein concerned. The good faith of this nation might be questioned if, having entered into the agreement and having accepted the assignment, the agreement were now to be defeated on the ground of conflict with our nation's public policy, and *a fortiori* any local public policy of a political subdivision of the nation. But the contention of the respondents herein is that our federal courts should apply an alleged policy, of one individual state, which would completely disable the Government of the United States of America from discharging its obligations assumed under a solemn international agreement. The correct principles which should be applied herein were stated by this Court in the case of

Oetjen v. *Central Leather Co.*, 246 U. S. 297, at 303, wherein it was said:

> The principle that the conduct of one independent government cannot be successfully questioned in the courts of another is as applicable to a case involving the title to property brought within the custody of a court, such as we have here, as it was held to be to the cases cited, in which claims for damages were based upon acts done in a foreign country, for it rests at last upon the highest considerations of international comity and expediency. To permit the validity of the acts of one sovereign State to be reexamined and perhaps condemned by the courts of another would very certainly "imperil the amicable relations between governments and vex the peace of nations."

Nor does this case involve merely the right to collect this bank deposit, or similar deposits. The issue herein has a deeper and broader significance. The motion made by respondents herein strikes at the very heart of the agreement between the United States Government and the Soviet Government whereby friendly relations were once more established between the two countries. The official documents setting forth the correspondence between the two governments demonstrate clearly that it was "the outstanding questions of indebtedness and claims" which for many years constituted one of the main sources of dispute. If the Government

of the United States is rendered incapable of realizing the amounts assigned to it by the Soviet Government, the effect may be to render the entire agreement nugatory and make it impossible for the United States Government to assist its own nationals in the settlement of their claims, as well as the claims of the United States Government itself, against the Soviet Government and its nationals. The agreement concluded between the two governments would be rendered meaningless, so far as it gave any benefit or compensation to the United States Government and to United States citizens.

The United States Government owes good faith to the Soviet Government not only in the making of the agreement but also in carrying it out. By this agreement the United States Government undertook to account to the Soviet Government for the amounts realized thereunder. Mr. Litvinov's letter (November 16, 1933) in making the assignment, states that it is "to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment." In his reply, President Roosevelt states that "I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment." This procedure for an accounting of the "amounts realized" shows that the assignment of claims is a part of a general

settlement of all claims and counterclaims. The Government of the United States of America should not, by a decision of this case on the ground of public policy be placed in a position where it cannot enter further negotiations freely and unhampered, with the full strength of having faithfully lived up to the letter and spirit of the agreement.

But even if we assume the correctness of respondents' theory that the public policy of an individual state can have any force and effect in an international situation such as we have here, what is that public policy which they seek to have applied? Certainly there is no public policy which calls for the protection of this depositary bank, or these respondents. They have no rights in and to this fund, but only an obligation to pay to whomever may be entitled thereto. Hence, there is no occasion for any application of any public policy in their favor. The only possible manner in which any New York, or even United States, public policy could operate in this proceeding would be in order to protect the Metal Company, a Russian national, from having its business nationalized, and its assets and liabilities taken over by its own Government. Of course, aliens, like citizens, are protected by our Constitution from being deprived of property without compensation, by our own Government. But it is a strange and dangerous doctrine to assert that our Constitution pro-

tects aliens from being deprived of their property by their own Government. All the more dangerous is such a doctrine when applied in connection with the fulfillment of an international agreement. Certainly it is not for the Government of the United States, and much less for the Government of a State, or their Courts, entrusted with the duty of carrying out this agreement with the Soviet Government, to erect safeguards for the protection of nationals of the Soviet Government against that Government itself.

There is nothing unique in a situation in which a sovereign, by operation of its own law, acquires title to or right in property of one of its nationals. There certainly is nothing which forbids our courts from giving effect to any title or right so acquired.

In *Sultan of Turkey* v. *Tiryakian*, 162 A. D. 613, affirmed 213 N. Y. 429, a foreign sovereign who by operation of the law of his sovereignty became the administrator and thereby acquired New York property of one of his subjects upon the intestate decease of that subject, was permitted to recover it, without any question being raised as to whether such a transfer was or was not conformable to our notions as to the proper disposition of private property upon intestate decease.

A departure from such a rule is urged upon this court merely because a sovereign has acquired from one of its own nationals a balance with a New York bank, through operation of a statute nationalizing the property, which statute, the respondents con-

tend, would be repugnant to our Constitution were it enacted by the United States or one of the States. Public policy, it is argued, dictates that the sovereign's claim based on such a statute be denied enforcement. The argument advanced by respondents postulates that foreign legislation must conform to the United States Constitution and also to local public policy in order to confer rights which will be enforced here. We submit that our domestic public policy is in no way concerned with the relations between a foreign sovereign and its nationals. If the latter may be aggrieved by the laws to which they are subject they must look to their own government or courts for redress. It is not the duty of our courts to grant them relief. On the contrary, when a foreign sovereign has acquired under its own law rights which it must come here to assert, our courts need examine only the sufficiency of the acquisition of the right of the foreign sovereign, and not the question of whether our own government could acquire that right in the same manner.

THE ACTION OF THE SOVIET GOVERNMENT IN NATIONALIZING THE MAJOR INDUSTRIES OF THAT COUNTRY IS NOT SUBJECT TO CONDEMNATION AS A "CONFISCATION" IN THE SENSE IN WHICH THAT WORD IS COMMONLY USED

The respondents' argument is, in essence, based upon their use of the word "confiscation." Almost without exception, respondents give to that word its most sinister connotation. But words must not blind our eyes to the facts. The Court must con-

sider what actually happened here. There is sufficient in this record to demonstrate that the Soviet Government, in making the whole industrial organization of Russia a part of the new national economy, did not merely go out and seize the property of individuals; it created a new system of national economy based upon public ownership of industry for the common welfare as that Government conceived it.

It is to be remembered that we are here dealing with the property of a Russian national, who, by virtue of his nationality, is bound and must abide by the acts of his own Government, including the whole scheme of nationalization of industries. The individuals who may have owned an interest or share in this industry, and whose interest or share was absorbed into the national plan, participate in whatever benefits accrue to the Russian nation and to Russian nationals, as a consequence of the economic order which they adopted for themselves.

We submit, therefore, that the situation with which we are here concerned cannot be said to involve a "confiscation", in the sense which that term has been used when confiscation is said to violate public policy.

Respondents assert also (Br. pp. 24–26) that the decree here in question is a "foreign penal law" and as such not enforcible in the forum. There is nothing in this record to support such an assertion. A general nation-wide system of nationalization as enacted by the decrees cannot on any theory be

brought within the classification of "penal laws". Furthermore, if this law be penal, it would follow that practically the entire economic and political system of the Soviet Union must meet with the same opprobrium in our courts. The consequences of such a doctrine are obvious.

We are here dealing with the acts of a foreign sovereign, recognized by us and the rest of the world, and entitled to the respect accorded to any other nation with whom we are on friendly terms. This recognized foreign sovereign nationalized its industries, including this Metal Company, in furtherance of a plan of so-called national economy, which in Russia was a theory of government having as a basis public ownership rather than private ownership of property. However we in this country may regard that as a theory of government, the fact remains that it is the theory of government which the Russian people have chosen for themselves. The fact that the people of the United States of America have chosen a different form of government and a different economic order, has no legal significance in this case. In fairness to the recognized foreign sovereign, we must assume, as that sovereign has declared, that the nationalized property is used for the common welfare of the Russian people. The situation, therefore, cannot be assimilated to the acts of bandits or insurrectionists in taking property and appropriating the same to their own individual uses.

THE FACT THAT THE RESPONDENTS ARE SUBJECT TO THE JURISDICTION OF THE SURROGATE'S COURT OF NEW YORK HAS NO BEARING ON THIS CASE

Respondents (Br. pp. 26–28) suggest that if the federal court should give the United States a judgment against these respondents, such a judgment could not be enforced in the Surrogate's Court of New York, since the latter could not recognize its binding force without doing violence to the public policy of the State of New York. To this contention there are two answers. First, the fact that the federal court judgment, once obtained, might be unenforceable is no reason for denying the petitioner's right to a judgment. Second, the petitioner's cause of action, if reduced to judgment, would thereafter be merged in the judgment, and the Surrogate's Court of New York would be precluded by that fact from enquiring whether or not the judgment was proper under the pleadings and proof before the federal courts. *Waterman* v. *Canal Louisiana Bank Co.*, 215 U. S. 33; *Riehle* v. *Margolies*, 279 U. S. 218.

THE ASSIGNMENT[1] CLEARLY COVERS THE CLAIM HEREIN ASSERTED

Respondents' brief, Point III (pages 50–53), states that "It is questionable whether the Litvinoff letter assigned title to the deposit to the United States." The respondents suggest that "a reasonable interpretation would be that it was intended to

[1] The text of the assignment is set forth in the Appendix to the Government's main brief, pp. 53–54; it appears also in the Official Document (pp. 13–14) submitted to the Court.

convey claims owing directly to the Government or its predecessors" and not to claims which the Soviet Government acquired by and through its decrees of nationalization. In the court below respondents sought to make this same narrow and technical constuction of this assignment, but that court ruled (Rec. 23) that "the language is too broad to permit of this construction", citing its similar ruling in the cases of *State of Russia* against *National City Bank*, 69 F. (2d) 44, 48, and *United States* v. *Bank of New York & Trust Co.*, 77 F. (2d) 866, 871. We submit that the ruling below is correct.

It is clear from the language of the assignment, which is broad and inclusive, that it was intended to transfer any amount due to the Soviet Government from American nationals. The funds held by the respondents are amounts due from the respondents, American nationals, to the Soviet Government.

We think the purpose and scope of the assignment were aptly summarized by Judge Manton, who in his opinion dissenting on other points in *United States* v. *Bank of New York & Trust Co.*, *supra*, stated:

> The ultimate design of the two countries in executing this assignment was to transfer "the claims and counterclaims between the governments of the Union of Soviet Socialist Republics and the United States of America, and the claims of their nationals", to the broad plane of diplomacy, and by placing

> those claims beyond the reach of vexatious judicial action, to facilitate at one stroke, the adjustment of the delicate points at issue between the two countries. No narrow or strained construction of that instrument is permissible under these circumstances.

The agreement of the Soviet Government, a friendly power with free access to the courts of the United States, not to sue in our courts to recover the amounts due it, requires the interpretation that *all* claims were assigned to the assignee. Any other interpretation would imply the abandonment of claims not assigned, and certainly that was not intended. The deliberately broad language of the assignment should be given effect.

The interpretation of the assignment to include claims to these funds of the Soviet Government, as made by the governments of Russia and the United States, is conclusive of the intention of the parties to the assignment. The correct interpretation is set forth in a note [3] addressed by Mr. Troyanowsky, the Soviet Ambassador, to the Secretary of State of the United States, dated July 21, 1936, reading as follows:

> The Ambassador of the Union of Soviet Socialist Republics presents his compliments to the Secretary of State and referring to the conversations concerning the suits instituted by the Government of the United

[3] This note was received by the Secretary of State subsequently to the making of this record, and therefore does not appear in the record.

States to recover assets of former Russian corporations nationalized by the government of the Union of Soviet Socialist Republics, has the honor to state that the 1933 agreement has in view those rights of the government of the Union of Soviet Socialist Republics which are subject to realization on the territory of the United States and which have passed to the Republics by virtue of its succession to former governments of Russia or by virtue of its succession to private companies on the basis of legislation concerning nationalization.

The basic nature of the amounts which were assigned by the government of the Union of Soviet Socialistic Republics in favor of the government of the United States is given in the exchange of communications between the President of the United States and Maxim M. Litvinoff, People's Commisar for Foreign Affairs of the Union of Soviet Socialist Republics on November 16, 1933, in the words: "for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals * * *." These words define these amounts as amounts passing to the government of the Union of Soviet Socialist Republics by virtue of succession, either succession to "prior governments of Russia", or succession "otherwise", for instance, to pre-revolutionary organizations and companies which were nationalized in accordance with Soviet legislation.

Attention of the Court is called also to the exchange of communications between the United States Government and the Soviet government, which are set forth in the Appendix to this reply brief, pp. 23 to 26.

In view of the above, we submit that there cannot be any question as to the intention of the parties to this assignment and the scope thereof.

In *State of Russia* v. *National City Bank of New York*, 69 F. (2d) 44, 48 (C. C. A. 2d), the court considered the scope of this assignment and stated that "it is apparent that the intent was to assign all the claims of the Soviet government to the United States."

Liberal construction of treaties is to be preferred. The construction adopted by the political department of the Government should be accepted. *Factor* v. *Laubenheimer*, 290 U. S. 276, 293–295; *Neilsen* v. *Johnson*, 279 U. S. 47, 52; *Tucker* v. *Alexandroff*, 183 U. S. 427, 437; *In re Ross*, 140 U. S. 435, 475.

The assignment, although not a treaty in the formal sense, is, as to the United States, an executive agreement with a foreign sovereign, and constitutes one of the conditions upon which recognition of the Soviet Government was granted. *State of Russia* v. *National City Bank, supra.* The rules applicable to the interpretation of treaties should be applied to the interpretation of such an executive agreement, not couched in the technical lan-

guage of a formal assignment, but contained in the diplomatic correspondence of recognition.

ADDITIONAL AUTHORITIES

Attention is called to the following authorities in addition to those cited in the main brief for petitioner.

In connection with Point I of the main brief, under which petitioner argues that the right to receive the amount of the bank deposit was governed by Russian law and was validly acquired by petitioner's assignor, see:

Long Island Water Supply Co. v. *Brooklyn,* 166 U. S. 685.

Blackstone v. *Miller,* 188 U. S. 189.

Converse v. *Hamilton,* 224 U. S. 243.

Pennington v. *Fourth National Bank,* 243 U. S. 269.

Bank of Jasper v. *First National Bank,* 258 U. S. 112.

United States of America v. *Prioleau,* Law Journal, 1866, N. S. vol. 35, Part I, Courts of Chancery, p. 7, Wood, V. C.

Sokoloff v. *National City Bank,* 239 N. Y. 158.

Jackson v. *Talmadge,* 246 N. Y. 133.

In connection with Point II of the main brief under which petitioner argues that there is no public policy which prevents enforcement of the claim, see:

Williams v. *Suffolk Insurance Co.,* 13 Pet. 415.

Respectfully submitted.

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MARCH 1937.

APPENDIX

Exchange of Communications Between the United States Government and the Soviet Government

Embassy of the
United States of America,
Moscow, January 7, 1937.

Mr. Maxim M. Litvinov,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics,
Moscow.

Mr. People's Commissar: I have the honor to inform you that it is the understanding of the Government of the United States that the Government of the Union of Soviet Socialist Republics considers that by and upon the formation of the Union of Soviet Socialist Republics and the adoption of the Constitution of 1923 of the Union of Soviet Socialist Republics, the Union of Soviet Socialist Republics acquired the right to dispose of the property, rights, or interests therein located abroad of all corporations and companies which had theretofore been nationalized by decrees of the constituent republics or their predecessors.

The Government of the United States further understands that it was the purpose and intention of the Government of the Union of Soviet Socialist Republics to assign to the Government of the United States, among other amounts, all the amounts admitted to be due or that may be found to

be due not only the Union of Soviet Socialist Republics but also the constituent republics of the Union of Soviet Socialist Republics or their predecessors from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, in litigation in the United States Court of Claims, and that the Government of the Union of Soviet Socialist Republics did release and assign all such amounts to the Government of the United States by virtue of the note addressed by you to the President of the United States on November 16, 1933.

Will you be good enough to confirm the understanding which the Government of the United States has in this matter, concerning the law of the Russian Socialist Federated Soviet Republic, the Constitution and laws of the Union of Soviet Socialist Republics, and the intention and purpose of the Government of the Union of Soviet Socialist Republics in the above-mentioned assignment?

I am, Mr. People's Commissar,

Very sincerely yours,

(Signed) LOY W. HENDERSON,

Chargé d'Affairs ad interim of the United States of America.

MOSCOW, *January 7, 1937.*

Mr. LOY W. HENDERSON,

Chargé d'Affaires ad interim of the United States of America, Moscow.

MR. CHARGÉ D'AFFAIRES: In reply to your note of January 7, 1937, I have the honor to inform you

that the Government of the Union of Soviet Socialist Republics considers that by and upon the formation of the Union of Soviet Socialist Republics and the adoption of the Constitution of 1923 of the Union of Soviet Socialist Republics, the Union of Soviet Socialist Republics acquired the right to dispose of the property, rights, or interests therein located abroad of all corporations and companies which had theretofore been nationalized by decrees of the constituent republics or their predecessors.

You are further informed that it was the purpose and intention of the Government of the Union of Soviet Socialist Republics to assign to the Government of the United States, among other amounts, all the amounts admitted to be due or that may be found to be due not only the Union of Soviet Socialist Republics but also the constituent republics of the Union of Soviet Socialist Republics or their predecessors from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, in litigation in the United States Court of Claims, and that the Government of the Union of Soviet Socialist Republics did release and assign all such amounts to the Government of the United States by virtue of the note addressed by me to the President of the United States on November 16, 1933.

I have the honor, therefore, to confirm the understanding, as expressed in your note of January 7, 1937, which the Government of the United States has in this matter, concerning the law of the Russian Socialist Federated Soviet Republic, the Con-

stitution and laws of the Union of Soviet Socialist Republics, and the intention and purpose of the Government of the Union of Soviet Socialist Republics in the above-mentioned assignment.

I am, Mr. Chargé d'Affaires,

Very sincerely yours,

G. LITVINOFF,

People's Commissar of Foreign Affairs,

Union of Soviet Socialist Republics.

U. S. GOVERNMENT PRINTING OFFICE: 1937

FILE COPY

DEC 8

CHARLES ELM

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 532.

UNITED STATES OF AMERICA,

Petitioner,

v.

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of August Belmont, Deceased,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE RESPONDENTS

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Counsel for Respondents.

JOHN W. DAVIS,
WILLIAM C. CANNON,
RALPH M. CARSON,
DANIEL E. WOODHULL, JR.,
of Counsel.

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BRIEF FOR THE RESPONDENTS

The Respondents cannot agree with the Petition or the reasons urged by the Petitioner for the granting of a Writ of Certiorari in this case, or acquiesce in the validity of the arguments made or in the application of the authorities cited in the Petition—except, the Respondents agree that the questions here presented are of national importance, and they realize that many other cases, involving substantial sums, may depend on the issue of this case, and for these reasons they believe that the questions involved in this case are of such public interest that they merit a hearing and a final and authoritative determination by this Court.

Respectfully submitted,

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Counsel for Respondents.

JOHN W. DAVIS,
WILLIAM C. CANNON,
RALPH M. CARSON,
DANIEL E. WOODHULL, JR.,
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Delogoa Bay Railway Case, 2 Moore, International Arbitrations, 1865, 1869 52

Fraenkel, Juristic Status of Foreign States, 25 Col. L. Rev. 544, 548 48

Habicht, The Application of Soviet Laws and the Exception of Public Order, 21 Amer. Journal of International Law, 238 32

Hyde, International Law, Sec. 622, 623 ..... 39, 52

Moore's International Law Digest, Sec. 997 52

Nebolsine, The Recovery of the Foreign Assets of Nationalized Russian Corporations, 39 Yale Law Journal, 1130 31

Restatement of the Law of Conflict of Laws, Secs. 208, 212, 213, 258, 350, 353, 354, 358, 366, 610, 611, 612 .....13, 15, 16, 20, 24, 25

Williams, Confiscation of Private Property of Foreigners under Color of a Changed Constitution, 5 Amer. Bar Assoc. Journal, 152, 162 42

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 532.

UNITED STATES OF AMERICA,
Petitioner,

against

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of August Belmont, Deceased,
Respondents.

RESPONDENTS' BRIEF

Opinions Below

The Opinion of the United States District Court for the Southern District of New York (R., p. 17) is not reported. The Opinion of the United States Circuit Court of Appeals for the Second Circuit is reported in 85 Fed. (2d) 542 (R., p. 22).

Statement

This action was at law, brought by the United States in the District Court against the Executors of August Belmont, deceased, claiming to recover the amount of a deposit account of a Russian Metal Company with his New York banking firm of August Belmont & Co.

The essential facts alleged in the complaint were that the Russian metal company had on deposit with the Belmont

firm, before 1918, a sum of money, which remained on deposit thereafter and that in 1918 certain decrees of the Russian State, including a decree, a copy of which was annexed to the complaint, together with a translation, dissolved, terminated and liquidated certain Russian corporations and nationalized and appropriated all of their assets (R., p. 3).

It was further alleged that by these decrees the metal company was dissolved terminated and liquidated and that its property and assets, wherever situated, including the deposit with the Belmont firm, were appropriated by the Russian State (R., p. 4).

The complaint further alleged that the Russian decrees did not provide for the payment of the claims of creditors of the Metal Company, except salaries and wages of employees, nor for compensation to its stockholders upon the nationalization and appropriation of its property and assets (R., p. 4).

The complaint also alleged that as a result of these decrees the deposit became the property of the Russian State and remained so until November, 1933, at which time the Government of the Union of Soviet Socialist Republics assigned to the United States all amounts admitted to be due or that might be found to be due to the said Russian Government as the successor of prior Governments of Russia, or otherwise, from American nationals, and that this included the deposit account with Belmont & Co. (R., pp. 4, 5, 12-16).

There are appropriate allegations as to the Belmont firm, the death of Mr. Belmont, the appointment of the defendants as Executors in the Surrogate's Court of Nassau County, New York, and the demand for payment for the amount of the deposit account, namely, $25,438.48, with interest, costs and disbursements (R., pp. 3, 4, 5).

In the District Court below the defendants moved to dismiss the complaint as being insufficient to constitute a cause of action against them and this motion was granted on the

authority of *U. S.* v. *Bank of New York and Trust Company*, 10 Fed. Supp. 269 (R., p. 17).

In the District Court two questions were raised, namely, as to the extra-territorial effect of the Russian decrees and as to the effect of the assignment. Judge COXE in the District Court, in *U. S.* v. *Bank of New York and Trust Company*, 10 Fed. Supp. 269, had decided both these questions in the negative, and Judge HULBERT, in the same Court, in dismissing the Second Amended Complaint herein followed this prior decision as controlling (R., p. 18).

Judge COXE's decision in the earlier case had been affirmed by a divided Circuit Court (77 F. [2d] 866), and unanimously by this Court (296 U. S. 463). But in both the Circuit Court of Appeals and in this Court the case was decided on a jurisdictional point to the effect that the Federal Courts should not interfere with the administration of the funds, of which the deposit accounts formed a part, by the New York State Courts. Funds deposited with the New York State Superintendent of Insurance by Russian insurance companies that had been doing business in New York were being liquidated and administered by him under State Court direction and surpluses deposited in bank subject to State Court order. The deposits were still subject to the order of the New York State Supreme Court in the liquidation proceedings in those cases.

Questions Presented

1. Whether the plaintiff is entitled, under a purported assignment from the Soviet Government, to recover a judgment at law for the amount of a deposit account made in New York with New York bankers by a Russian metal corporation prior to the Russian revolution, by virtue of Soviet decrees nationalizing the corporate enterprise and confiscating its assets.

2. Whether the bank deposit in this case, or the obligation of the bankers with respect thereto, was subject to or governed by the Soviet decrees of confiscation.

3. Whether the courts of this country will give extraterritorial effect to Russian decrees of confiscation so as to recognize, and enforce, as a result of such decrees, a title to a deposit account located in the State of New York, under a purported assignment of such property by Russia to the United States, accepted by the President of the United States, after the recognition of Russia by this country, when New York refuses to recognize a title to such property so located within its borders based on such decrees as contrary to public policy.

4. Whether confiscation of private property in New York by a foreign country is against public policy.

5. Whether the Litvinoff Letter, properly construed, did in fact purport to assign title to the deposit in question to the United States.

Summary of Respondents' Argument

Foreign decrees of confiscation have no extraterritorial effect upon private property in New York. Where comity and public policy conflict, the latter will prevail. We recognize the effect of decrees of foreign governments on property within their territorial limits, but not on property elsewhere when those decrees are contrary to our own laws and sense of justice.

In New York the law is that attempted confiscation by a foreign government of property in New York will not be given effect. It is clearly against the public policy of the State. The deposit account is property located in New York, where it was made and maintained, and where it was payable. All questions of its ownership and of performance of the contract are governed by New York law. This is a question of title to private property to be governed by the State law. Even a foreign assignee is subject to this law, but the Soviet government was not like a statutory successor, where rights of creditors and stockholders are preserved. This was confiscation, not succession, in our sense.

A bank deposit is property in the state where the bank is, and that state has full dominion over it.

Where the question is one of confiscation, the fact that the deposit is a debt, and the creditor Russian, does not support the argument that Russian law governs, or that our law does not govern. If the deposit had a situs, it was in New York, not Russia. Authority and common sense unite in saying that the State of New York has full dominion over the property.

The doctrine of *mobilia personam sequuntur* does not apply. It is a fiction which should not be extended beyond its present scope.

Comity should not require recognition of decrees of confiscation repugnant to public policy nor enforcement of a foreign penal law. Nor should some law other than that of New York be applied, since respondents are New York executors.

Decisions abroad are in accord with New York law.

Confiscation involves more than regulation of the internal relations of a corporation, and *Canada Southern Ry. Co.* v. *Gebhardt*, 109 U. S. 527, does not apply.

Public policy of both state and nation are opposed to plaintiff's claim. Public policy is to be found in the Constitution and laws and the course of administration and decisions. Federal and state constitutions forbid the taking of private property without due compensation, and the deprivation of property without due process of law. The decisions of the courts, and the constitutions, are all evidence of the public policy here to be applied. They are clearly opposed to the confiscation of private property.

Neither the acceptance of the Litvinoff assignment nor recognition of the Soviet government as *de jure* affect the public policy or law applicable to the question here, which is one for the courts and not for the Executive. The alleged transfer of the claim to the United States could not give it any greater validity than it had in the hands of its assignor.

It is questionable whether the Litvinoff Letter in any event assigned title to the deposit to the United States.

Argument

POINT I

The Russian Decrees of Confiscation Have No Extra-territorial Effect Upon Property in New York at the Time of the Decrees.

It is a well recognized principle that decrees of foreign nations are given extraterritorial effect only by comity. Comity does not require us to enforce foreign decrees with respect to property here when they are contrary to our public policy and sense of justice. Where the two conflict, the public policy of the forum must prevail. The confiscation of private property is contrary to our laws and Constitutions. It is too late now to ask an American court to enforce a foreign confiscatory decree with respect to such property in this country at the time of the decrees. Perforce, we must recognize the power of a foreign government over property that is within its territorial jurisdiction. Its dominion in its own territory is as complete as ours in our territory. This will explain cases cited by the petitioner, such as the *Oetjen*, *Ricaud*, and *Salimoff* cases, where at the time of a foreign decree property is within the territorial limits of the foreign government. Where, however, property is outside the territorial limits of the foreign sovereign at the time of decree, no effect will or can be given to the act or decree of confiscation, as full dominion is clearly within the jurisdiction of the state or nation where it is. It cannot be affected by the decrees of any other nation. The authorities can be reconciled, if this distinction is borne in mind.

A

New York Refuses to Give Extraterritorial Effect to Soviet Decrees of Confiscation as to Property Located in New York.

It is clear that by the law of New York extra-territorial effect will not be given to the Soviet decrees of confiscation as to property located in New York at the date of the de-

crees. It is against the public policy of the state to enforce them with respect to such property.

In *Vladikavkazsky Railway Co.* v. *New York Trust Co.*, 263 N. Y. 369, decided after recognition by this country of the Soviet Government, a Russian railroad corporation sued to recover a deposit in a New York bank. The Bank defended, *inter alia*, on the ground that since the nationalization of the railroad, its directors were acting without authority in claiming the deposit. In holding that the defenses were insufficient, the Court said, at pages 378-379:

"The deposit was made in New York City, the home of the bank; that is where the contract obligation was created and where it is by its terms to be performed, entirely outside Russian jurisdiction. Laws of foreign governments have extraterritorial jurisdiction only by comity. (*Huntington* v. *Attrill*, 146 U. S. 657, 669.)

"The principle which determines whether we shall give effect to foreign legislation is that of public policy. (*Russian Reinsurance Co.* v. *Stoddard*, *supra*; *Joint Stock Co.* v. *National City Bank*, 240 N. Y. 368, 377; *Russian Socialist Federated Soviet Republic* v. *Cibrario*, 235 N. Y. 255, 263.)

"Where there is confliction between our public policy and comity, our own sense of justice and equity as embodied in our public policy must prevail. (*Russian Socialist Federated Soviet Republic* v. *Cibrario*, *supra*.)

"It is hardly necessary to state that the arbitrary dissolution of a corporation, the confiscation of its assets and the repudiation of its obligations by decrees, is contrary to our public policy and shocking to our sense of justice and equity. That the confiscation decree in question, clearly contrary to our public policy, was enacted by a government recognized by us, affords no controlling reason why it should be enforced in our courts. (*Baglin* v. *Cusenier*, 221 U. S. 580.)

"We enforce the same principle even in regard to statutes of sister States. (*Barth* v. *Backus*, 140 N. Y. 230, 239.)

"The fact that the present Russian government was not recognized was not the basis of our refusal to give effect to its decrees nationalizing corporations and confiscating their property. During the period when those decisions were made, we recognized and enforced 'mere ordinary legislation,' relating to 'every day transactions of business or domestic life.' (*Petrogradsky M. K. Bank* v. *National City Bank, supra; Matter of People* [First Russian Ins. Co.], 255 N. Y. 428, 432.)

"Prior to recognition we clearly intimated that our decision would have been the same if at the time recognition had been granted. (*James & Co.* v. *Second Russian Insurance Co.*, 239 N. Y. 248, 257.)

"The general statement contained in the opinion in *Salimoff & Co.* v. *Standard Oil Co.* (262 N. Y. 220), to the effect that recognition of a *de facto* government as a *de jure* government is retroactive in effect and validates all the acts of the government so recognized from the commencement of its existence, must be read in connection with its context and as so read it did not refer to acts sought to be given effect extraterritorially."

Cf. language in *Petrogradsky M. K. Bank* v. *Nat. City Bank*, 253 N. Y. 23, at page 29; *Joint Stock Co.* v. *Nat. City Bank*, 240 N. Y. 368, at page 377; *Russian Reinsurance Co.* v. *Stoddard*, 240 N. Y. 149, at page 168; *Dougherty* v. *Equitable Life Assurance Society*, 266 N. Y. 71, at page 90.

See also, New York Session Laws, 1936, Chapter 917, new Section 977-B, New York Civil Practice Act, Subdivision 19.

The *Vladikavkazsky* and *Dougherty* cases were decided after recognition, the others before. In the *Dougherty* case, the Court recognized the effect of the Russian decrees as to contracts to be performed in Russia under Russian law. In the *Vladikavkazsky* case, the Court refused to do so as to a bank deposit in New York.

In the face of the definite expressions of the Court in that case it can scarcely be argued that there was no refusal to

recognize the Soviet government's title based on nationalization decrees, or that as between the Soviet government and the corporation the latter would not prevail in a New York court.

Thus it is seen that while there is no quarrel with the assertion that recognition acts retroactively to validate the Russian decrees of confiscation, as to property in Russia and rights arising under Russian Law, still this does not mean at all that it must follow as a necessary corollary that they must be enforced in this country as to private property located in this country. Indeed quite the contrary is seen to be the case. The New York cases recognize that while recognition gave the Soviet Government an international standing which it did not have before, recognition or lack of recognition of course is not determinative of the question here involved. In *Dougherty* v. *Equitable Life Assurance Society, supra* (while it was held that insurance contracts made in Russia with an American company by Russian citizens to be performed in Russia according to Russian law would be regarded as subject to Russian law, even though the fulfillment of the obligations of the American insurer were guaranteed, besides its assets and securities found in Russia, by all the property belonging to it), the Court said at page 90: "Recognition does not compel our Court to give effect to foreign laws if they are contrary to our public policy."

Judge CARDOZO writing the opinion in *James & Co.* v. *Second Russian Ins. Co.*, 239 N. Y. 248, an action by the assignee of an English insurance company against a Russian reinsurer for losses sustained, said, at pages 255 and 257: "The decree of the Russian Soviet government nationalizing its insurance companies, has no effect in the United States unless, it may be, to such extent as justice and public policy require that effect be given. * * * We think its attempted extinguishment of liabilities is *Brutum fulmen*, in England as well as here, and this, whether the government attempting it has been recognized or not. Russia might

terminate the liability of Russian Corporations in Russian courts or under Russian law. Its fiat to that effect could not constrain the courts of other sovereignties, if assets of the debtor were available for seizure in the jurisdiction of the forum."

The theory of the New York decisions is not new or peculiar to the Russian situation. In *Barth* v. *Backus*, 140 N. Y. 230, it was held that the title of a Wisconsin assignee for the benefit of creditors would not be given extraterritorial effect in New York to preclude New York creditors from attaching property in New York. See also, *Marshall* v. *Sherman*, 148 N. Y. 9. Foreign penal laws or those contrary to public policy will not be enforced in New York. See, *Loucks* v. *Standard Oil Co.*, 224 N. Y. 99, 112.

Under the law and public policy of New York when a corporation is dissolved its assets are not subject to confiscation or escheat. They are considered to be the property of all the stockholders and creditors, wherever they may be, and are to be held for such persons. *People* v. *National Trust Co.*, 82 N. Y. 283, 287; *Shayne* v. *Evening Post*, 168 N. Y. 70; *People* v. *O'Brien*, 111 N. Y. 1; *Matter of Long Sault Development Co.*, 212 N. Y. 1. In *Lord* v. *Equitable Life Assurance Society*, 194 N. Y. 212, 227, it was said: "When the legislature has created a corporation and has given it power to acquire property, it cannot take away the property so acquired without providing for compensation."

(1)

It Cannot Be Here Contended That the Russian Government Has a Title Akin to That of a Statutory Liquidator

The title of a foreign liquidator to assets in New York will only be recognized and enforced where it appears that the funds will be dealt with in the interests of creditors and shareholders; and this is, of course, far from being the

case here. In *In Re Waite*, 99 N. Y. 433, 448, it was said: "The titles of foreign statutory assignees are recognized and enforced here (through comity), when they can be without injustice to our own citizens, and without prejudice to the rights of creditors pursuing their remedies here under our statutes; *provided also, that such titles are not in conflict with the laws or the public policy of our State.*" (Italics ours.) See also: *Matter of People* v. *City Equitable Fire Ins. Co.*, 238 N. Y. 147, 157; *Martyne* v. *American Union Fire Ins. Co.*, 216 N. Y. 183, 192. Moreover in *Cole* v. *Cunningham*, 133 U. S. 107, 122-123, this Court recognized this rule saying: "The rule in that State is, that by the comity of nations, the statutory title of foreign assignees in bankruptcy is recognized and enforced when it can be done without injustice to the citizens of the State and without prejudice to creditors pursuing their remedies under the New York statutes, provided also that such title is not in conflict with the laws or public policy of the State and that the foreign court had jurisdiction of the bankrupt.". See also *Security Trust Co.* v. *Dodd Mead & Co.*, 173 U. S. 624 629.

Petitioner argues that the Soviet Government had power to and did dissolve the Metal Company, and constituted itself as its successor; that it is settled law that on the dissolution of a corporation, the successor designated by the State of its incorporation obtains title to the corporation's estate wherever situated. This is in effect contending that the Soviet Government has a title here to the deposit in question akin to that of a foreign statutory liquidator that should be recognized. In the first place, as has been seen, it is clear that no title of any foreign liquidator will be given effect where as here it would be so contrary to public policy to do so. But further, *no* analogy of liquidation can here prevail. Here the confiscation of a solvent corporation is in question, which is a far cry from the orderly liquidation of an insolvent corporation. Confiscation is not liquidation, for liquidation implies winding up, and the *settling*

with creditors. Judge CARDOZO writing the opinion in *James & Co.* v. *Second Russian Ins. Co., supra,* said at page 257: "The decree invoked by the defendant is not in any true sense a decree of bankruptcy, though even if it were, there would be limits to its extra-territorial validity. A decree of bankruptcy presupposes a distribution of the assets for the benefit of creditors, and this decree is one of confiscation, appropriating the assets for the benefit of the Soviet republic." Here no settling with creditors is contemplated, but rather a seizure, and an accounting by the United States of the amount so seized to the Russian Government.

The so-called succession was by confiscation. It was the very act which our courts say will not be given effect as a means of transferring title in New York. Moreover, the title of a statutory assignee will only be enforced in compliance with, and subject to, the public policy of the forum.

B

Because the Amount of the Deposit Here Claimed is Property Localized in New York, New York Law Must Govern

The petitioner seeks to avoid the rule that confiscatory decrees of a foreign power will not be enforced with respect to property or obligations outside of its territorial limits. It argues that the deposit with the Belmont firm in New York was subject to the confiscatory decrees because the depositor was a Russian corporation; that a bank deposit creates a debtor-creditor relationship resulting in an obligation to pay on the part of the bank and a right to receive the amount of the deposit on the part of the creditor, and that the obligation to pay is situated at the place of business of the bank, in this case New York, while the right to receive is situated at the place where the creditor is. The creditor in this case being a Russian corporation, the argument is that its right to receive was situated in

Russia and this right was divested from it and transferred to the Soviet Government, which thereby acquired a valid right under its own law, which would be recognized by our courts.

But if the obligation to pay is situated here, as it is, then clearly our law must apply and not that of Russia. The duty, for the performance of which the debtor is bound, will be discharged by compliance with the law of the place of performance of the promise, which law determines the manner of performance, the time and locality of performance, the person or persons by whom or to whom performance shall be made or rendered, the sufficiency of performance and excuse for non-performance. Restatement, Conflict of Laws, § 358.

Petitioner in its brief argues that Russian law must determine to whom payment should be made (p. 16). The Restatement, Conflict of Laws, is to the contrary.

> "The law of the place of performance of a contract determines the person to whom performance shall be rendered." (Restatement, § 366.)

The tenuous right to receive is really no right in Russia but one to receive in New York, where it is the corollary of the obligation to pay in the State where performance is due. It seems clear on the authorities that if a situs is to be ascribed to a bank deposit, that situs was in New York, as a result of which the State had full dominion, no matter what the residence of the depositor or its representatives. *Pennington* v. *Fourth Nat. Bank*, 243 U. S. 269; *Security Savings Bank* v. *California*, 263 U. S. 282. See also *Richardson* v. *National Bank of India*, 43 T. L. R. 631. In *Security Savings Bank* v. *California*, *supra*, page 285, the Court said,

> "Thus the deposits are clearly intangible property within the state. Over this intangible property the state has the same dominion that it has over tangible property."

There a state law providing, through appropriate procedure, for the payment over of savings deposits in a state banking corporation long unclaimed, to the state as depositary, or by way of escheat, was held not to violate any right of the bank under the contract clause of the Constitution or the due process clause of the Fourteenth Amendment. It did not appear what was the residence of the depositors (see p. 284) and the dominion of the State of California over the deposits was fully recognized.

In the *Pennington* case, *supra*, at page 271, Mr. Justice BRANDEIS said,

> "The Fourteenth Amendment did not, in guaranteeing due process of law, abridge the jurisdiction which a State possessed over property within its borders, regardless of the residence or presence of the owner. That jurisdiction extends alike to tangible and to intangible property. Indebtedness due from a resident to a non-resident—of which bank deposits are an example—is property within the State. *Chicago, Rock Island & Pacific Ry. Co.* v. *Sturm*, 174 U. S. 710. It is, indeed, the species of property which courts of the several States have most frequently applied in satisfaction of the obligations of absent debtors. *Harris* v. *Balk*, 198 U. S. 215."

In that case it was held that a state could make a decree for alimony a charge on a bank account of a non-resident defendant.

Under the law of New York a bank account is localized at the place of deposit. *Bluebird Undergarment Co.* v. *Gomez*, 139 Misc. 742; *Murtagh* v. *Yokohama Specie Bank*, 149 Misc. 693. The debt here was created by New York law and was due and payable under New York law, hence it is governed and discharged by New York law. *Zimmerman* v. *Sutherland*, 274 U. S. 253; See also: *Sokoloff* v. *Nat. City Bank*, 239 N. Y. 158, 169, and *Vladikavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369, 378. In *Matter of Houdayer*, 150 N. Y. 37, 40-41, the court said: "The decedent brought his money into this State, deposited it in a

bank here and left it here until it should suit his convenience to come back and get it • • • conceding that the deposit was a debt, conceding that it was intangible, still it was property in this State for all practical purposes • • • the fund has a situs here because it is subject to our laws."

See also *Wheeling Steel Corporation* v. *Fox*, 298 U. S. 193; Conflict of Laws, Restatement, §§ 208, 212, 213, 258.

While, as pointed out by the plaintiff in its brief (p. 17), the term "debt" has the dual correlative meanings of "debt" and "chose in action", we are here interested in the situs of the "debt". A deposit account (the "debt" here) is localized in the state of the depositary, where it was made, where it is due and payable, under whose law its contract is governed, and where the funds constituting it actually are and always have been, and that state is regarded as having dominion over the deposit even as over tangible property within its borders. The obligation to pay the debt here is determined by New York law, as the plaintiff admits, and as *Minor* points out (plaintiff's brief, p. 18), this "corresponds to the *actual* situs of the tangible chattels", and hence must determine that the debt has its situs here in New York. See *Severnoe Sec. Corp.* v. *London and Lancashire Ins. Co.*, 255 N. Y. 120, at page 124. It was said in *Chicago R. I. etc. Ry.* v. *Sturm*, 174 U. S. 710, 716 (a case relied on by the plaintiff): "• • • considerations of situs are somewhat artificial. If not artificial whatever of substance there is must be with the debtor. He and he only has something in his hands." We are not concerned with the intangible right to receive, for whenever property is located in one state, there may be persons elsewhere with rights to receive recognized by other states, but the state wherein the property is actually located will be deemed to have dominion over it. The right to receive may be deemed operative only in respect to the power of the Russian State *in Russia*. Cf. *Clark* v. *Williard*, 294 U. S. 211, 213-214. The question here at issue is not as to enforcement of the

right to receive, but *as* to the obligation to pay, which is to be determined by the laws of this country, the locality of the debtor, which clearly considers the deposit to be located here, and which rejects giving effect to foreign confiscation in respect to it.

If the so-called right to receive is so far to be governed by Russian law, and its transfer by confiscation to give full rights to the assignee, then the right of the forum to govern the obligation to pay would be gone—a result contrary to the authorities and to common sense.

To say that a deposit of cash made in a New York bank, maintained and repayable there, has sufficiently a situs in Russia, so as to compel us to recognize the validity of a confiscatory decree contrary to our every conception of public policy, is carrying fictions to an extreme. It is certainly not the doctrine of our law. When fictions are disregarded it must be clear that in the last analysis the State of New York has full dominion over the account.

If the question as to this deposit account is regarded as one of contract, then the result is equally clear. The deposit was repayable in New York. Matters of performance of a contract are governed by the law of the place of performance. This includes, among other matters the sufficiency of performance and the person to whom performance shall be made or rendered. *Conflicts Restatement, supra.*

Since the amount in question is localized in New York, is property located in New York, the law and public policy of New York must determine the ownership of the amount. *Disconto-Gesellschaft* v. *U. S. Steel Co.*, 267 U. S. 22, 28, where it was said: "But the question who is the owner of the paper depends upon the law of the place where the paper is"; *Burnet* v. *Brooks*, 288 U. S. 378. In *Pennoyer* v. *Neff*, 95 U. S. 714, 722, the court said: "* * * every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence every State has the power to determine for itself * * * and

also to regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed and transferred."

In *Clark* v. *Williard* (292 U. S. 112), 294 U. S. 211 (twice before the court on certiorari), it was held that while a state where there were assets must recognize the title of the Superintendent of Insurance of the state of incorporation as the statutory successor, under the full faith and credit clause of the Constitution, it could refuse to enforce such title as to local assets where against local public policy. The Iowa Superintendent there had to submit to the Montana laws as to Montana assets, and to have his recognized title subordinated to the liens of the executions of local Montana creditors claiming the right to levy in order of filing, even though under Iowa law an assurance of equality of distribution was provided. The Court said (294 U. S., at pp. 213, 214, 215):

> "Every state has jurisdiction to determine for itself the liability of property within its territorial limits to seizure and sale under process of its Courts * * *. He (the Iowa statutory liquidator) must submit * * * to the mandate of the sovereignty that has physical control of what he would reduce to his possession * * * Iowa may not say * * * that a liquidator with title who goes into Montana may set at naught Montana law as to the distribution of Montana assets, and carry over into another state the rule of distribution prescribed by the statutes of the domicile."

Here a sovereign State of the Union, fortified by the "full faith and credit" clause of the Federal Constitution was held to be powerless to interfere with the disposition of the property of one of its corporations by another state where the property in question was situated. It is preposterous to contend that a foreign government, entirely *without* the benefit of such clause, could possibly be in any *better* position; and this case shows that while the state that creates a corporation can dissolve it and can provide to whom

its assets shall pass on dissolution, (a well known and elementary proposition which the United States here asserts in argument), it is an entirely separate and different question as to whether the law of the place where the property is localized and has its situs will allow a disposition of such property so under its jurisdiction contrary to its law and public policy. This case shows that it need not do so.

Suit will not be allowed in a Federal court to circumvent the declared public policy of New York. Really a deposit contract is here concerned, and the law as to a contract is determined by the public policy in force in the state where the contract is to be enforced and performed unless the constitution, treaties, or laws of the United States or general principles of law are different. *Becker* v. *Interstate Business Men's Association,* 265 Fed. 508. "Neither by comity nor by the will of contracting parties can the public policy of a country be set at naught." *The Kensington,* 183 U. S. 263, 269. See also *Kennett* v. *Chambers,* 14 How. 38, 52.

Moreover it was said in *Cooper* v. *Newell,* 173 U. S. 555, 567: "* * * and the courts of the United States are bound to give to the judgments of the state courts the same full faith and credit that the courts of one state are bound to give to the judgments of the courts of her sister states." In *Bank of Augusta* v. *Earle,* 13 Pet. 519, 597, it was said: "When the policy of a State is thus manifest, the courts of the United States would be bound to notice it as a part of its code of laws." One of the powers *not* delegated to the Federal Government is the sole and exclusive jurisdiction of persons and property within a state's territory; in respect to such the decisions of the state court in question must be respected.

The garnishment cases relied on by the Government in reality recognize the same principle, and we are unable to find authority for the proposition that the so-called right to receive of the creditor gives Russia jurisdiction to transfer the title to property in New York.

> "Substituted service on a non-resident by publication furnishes no legal basis for a judgment *in personam*. *Pennoyer* v. *Neff*, 95 U. S. 714. But garnishment or foreign attachment is a proceeding *quasi in rem*. *Freeman* v. *Alderson*, 119 U. S. 185, 187. The thing belonging to the absent defendant is seized and applied to the satisfaction of his obligation. The Federal Constitution presents no obstacle to the full exercise of this power." *Pennington* case, *supra*, at page 271.

Essentially there is no difference here between tangibles and intangibles, for if instead of a bank account the property was a horse or an automobile in New York it might with equal logic be said that the components of the property rights therein were the owner's right to receive and the holder's obligation to deliver up, and that as the owner was Russian his right to receive was a property right which might be dealt with by Russian decree. It seems clear from all the cases that the law is to the contrary.

The cases where choses in action represented by or embodied in negotiable instruments or other similar documents are held subject to the foreign law when they are there situated present no analogy since for many purposes the property is considered to be where the instrument is physically held.

In addition to the dictum in *U. S.* v. *Bank of New York and Trust Company*, in the Circuit Court of Appeals, quoted at pages 19-20 of the Government's brief herein, it must be remembered that the Court also said immediately after the quotation referred to (p. 868),

> "When the executive branch recognized the Soviet Government, the judicial branch became bound to recognize the validity of Soviet decrees *in Soviet territory* from the beginning of the Soviet regime." (Italics ours.)

The Circuit Court of Appeals did not decide that we must give effect to the confiscatory decrees as to property here, since the decision of the case was that the state courts had

jurisdiction of the res and that the Government's suit must fail. If the dictum is to be relied on, it must be regarded as overruled by the decision of the Circuit Court of Appeals in the present case. The Russian decree was clearly not an assignment in the ordinary sense but an expropriation and destruction of all private property rights, and rules of law designed to apply to cases of ordinary assignments have no real application.

It may be so that the effect of an ordinary assignment of a contract right as between the assignor and the assignee is determined by the law of the place of assignment (Restatement, § 350). But the right of the assignee to payment is determined by the law of the place of performance.

> "The law of the place of performance of an assigned contract determines whether the right of an assignee can be destroyed by payment to the assignor." (Restatement, Conflict of Laws, § 353.)

So the law of the place of performance of an assigned contract determines whether payment by the obliger to a second assignee destroys the right to performance of the first assignee (Restatement, § 354).

If this had been tangible property in New York, can there be any doubt that the decrees would be ineffective to give title? Yet there would be what petitioner in its brief calls an assignment good by Russian law. In the same brief there is reference to the statement of the New York court that there is no distinction between the seizure of tangible property and the disposition and canceling of rights to intangible property. (Brief for the United States, p. 37, quoting from the *Dougherty* case.)

The *Guatemala* case (1927, 1 K. B. 669), had nothing to do with confiscation of property by a foreign government. The Court held that an assignment made in Guatemala without consideration, which was invalid by the law of the place where made, would not be recognized in England even though if made there it would have been valid.

In *Hutchison* v. *Ross*, 262 N .Y. 381, the New York Court of Appeals held that the validity of a trust of personal property must be determined by the law of New York when the property was situated there, and the parties intended that it should be administered there in accordance with the laws of the State. The question for the Court was whether conveyances in trust of securities made *inter vivos* should be governed by the same rules as testamentary trusts or by the same rules as other conveyances *inter vivos*. It was urged upon the Court that as the settlor was a non-resident, the question of the validity of the trust must be governed by the law of his domicile, as in the case of testamentary trusts. Reliance was placed on the *Anziani* case cited by the Government here. But the Court refused to extend the doctrine and said of the *Guatemala* and *Anziani* cases,

> "Judicial decisions affecting the situs of choses in action or intangible property not embodied or merged in a mercantile document are not in point. (Cf. *Matter of Anziani*, [1930] 1 Ch. 407, and *Republica de Guatemala* v. *Nunez* [Court of Appeal, 1927], 1 K. B. 669.) We are dealing with a conveyance in trust of documents which in the market-place are treated as property and not merely evidence of property (Cf. *Pierpoint* v. *Hoyt*, 260 N. Y. 26), and consider no other question."

The petitioner argues that the situs of an intangible is not necessarily localized at one place for all purposes, and quotes from the *Severnoe Securities Corporation Case* (255 N. Y. 120, at 123). There a cause of action in favor of a Russian insurance company grew out of transactions in England with a British insurance company having a branch in New York. The surviving directors, less than a quorum, were held to be without capacity to sue in the corporate name in the absence of an emergency, nor to enlarge their powers by making an assignment for the same purpose to someone else. Chief Judge CARDOZO, saying that the situs of intangibles is a legal fiction, stated that there were times when justice or convenience required that a legal situs be ascribed to them:

> "At the root of the selection is generally a common sense appraisal of the requirements of justice and convenience in particular conditions" (pp. 123-124).

While it is true, as stated in the Government's brief, that he went on to say that for the purpose of the case at hand, if not for others, the situs of the chose in action was England and perhaps in Russia, but certainly not here, he continued:

> "The debt is localized in England because there contracted by a British debtor in favor of a foreign creditor doing business in England in conformity with British law" (p. 124).

The Petitioner's argument brings it ultimately to the doctrine of *mobilia sequuntur personam*. This doctrine is another fiction which has become imbedded in the law with respect to decedents' estates. The cases in respect to this doctrine concern the administration of decedents' estates and taxes, succession taxes at the domicile upon estates of deceased persons. The rule is not that the property of a deceased person in a foreign jurisdiction can be taxed at the domicile, but rather that the tax is one of privilege of succession imposed on the allowance by the law of the domicile of the enjoyment of a transfer by law or intestacy. The tax is on the privilege of succession, not upon the property itself. It has no real application to the case at bar. *Blodgett* v. *Silberman*, 277 U. S. 1, relied on by Petitioner dealt with the imposition of a succession tax on a decedent's estate. See also *Farmers Loan Co.* v. *Minnesota*, 280 U. S. 204, 214. These cases have no application to the dissolution of a corporation, nor is there any question of succession at the domicile here, except by reason of confiscation.

The doctrine at best must yield to established facts of legal ownership, actual presence, and control, and to the facts and circumstances in justice requiring it. *De Ganay* v. *Lederer*, 250 U. S. 376, 382; *Baker* v. *Baker, Eccles & Co.*,

242 U. S. 394, 401; *Safe Deposit & Trust Co. of Baltimore* v. *Virginia*, 280 U. S. 83, 92, 93; *Colorado* v. *Harbeck*, 232 N. Y. 71. There can be only one situs here. Cf. *First National Bank* v. *Maine*, 284 U. S. 312, 326.

Certainly, no such extension is found in the *Oklahoma Gas Case*, cited by the Government for the proposition that the dissolution of a corporation cannot be distinguished from the death of a natural person in its effect. In that case there was a motion to substitute an alleged successor for the dissolved corporation, which was denied for lack of information given by the motion papers, without prejudice to renewal on a fuller showing. Whatever may be the effect of the termination of existence of a corporation where statutes do not provide, as is usual, for orderly liquidation for the benefit of creditors and stockholders, the doctrine can have no application to the question of confiscation of property. It would be an anomaly, if doctrines useful for certain purposes, were allowed to apply to circumstances which were not, and could not have been, in the minds of a court deciding cases on other facts wholly unrelated to those at bar.

We are not dealing here with the case of a voluntary assignment. Moreover, an involuntary assignment even for the benefit of creditors under the laws of a foreign state, is not to be enforced in the state of the forum where to do so would cause conflict with the rights of creditors under the laws of the forum. *Clark* v. *Williard*, 294 U. S. 211.

In the *Russian Reinsurance* case, 240 N. Y. 149, referred to by the Government, the Court also said,

> "If it is urged that by so doing we may enable the Soviet government in case of recognition by the State Department to assert here an unjust claim based upon confiscation, the answer is that the responsibility rests upon that branch of our government to determine in the first instance whether and upon what terms the Soviet government should hereafter be recognized and the courts will then determine, subject to any rights granted by treaty, whether they will enforce any claim asserted by that government" (p. 168).

Whatever the effect to be given upon diplomatic recognition of the Soviet Government as *de jure*, it is inconceivable that the title to the cash in bank in an American banking house can be transferred from one person to another by a confiscatory decree of a foreign power.

C

Comity May Not Be Here Extended to Enforce Soviet Decrees of Confiscation Repugnant to the Public Policy of New York, Nor to Enforce a Foreign Penal Law

The statutes of a foreign state can in no case have any force or effect in another state *ex proprio vigore*. *Matter of Accounting of Waite*, 99 N. Y. 433, at page 448. In *Hilton* v. *Guyot*, 159 U. S. 113, 163, it was said: "No law has any effect of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have called the comity of nations." When a foreign law sought to be enforced in this country offends against public policy, comity must then give way to public policy and the foreign law will not be enforced. *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 290; *Bradford Electric Co.* v. *Clapper*, 286 U. S. 145, 160; *Rose* v. *Himely*, 4 Cranch 240; *The Appollon*, 9 Wheat. 362. A state will not enforce the penal laws of a foreign state.

The Restatement of the Law of Conflict of Laws says: "610. No action can be maintained on a right created by the law of a foreign state as a method of furthering its own governmental interests." See also Sections 611, 612. To recognize a title to property in this country as a result of Russian decrees of confiscation would be giving effect to laws of Russia enacted to further its own special governmental interests and policy.

Moreover, it has been held that in case of any doubt a statute should be construed as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power as all legislation is *prima facie* territorial. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 357. See also: *Hamilton* v. *Accessory Transit Co.*, 26 Barb. 46; *Second Russian Ins. Co.* v. *Miller*, 297 Fed. 404, 409 (aff'd 268 U. S. 552).

Since it is clear that the enforcement of the Soviet decrees of confiscation would be entirely repugnant to and offend the public policy of the State of New York comity may not be resorted to, and such decrees should not be enforced. The title of a foreign statutory assignee will be recognized only by comity, and only when in harmony with the established policy of the law of the forum. *Cole* v. *Cunningham, supra; Security Trust Company* v. *Dodd Mead & Co., supra.* The law of the domicile must yield when it is shown that it is contrary to the law and policy of the state where property affected is actually located. *Keller* v. *Paine*, 107 N. Y. 83, 89; *Warner* v. *Jaffray*, 96 N. Y. 248, 255; *Dearing* v. *McKinnon, etc. Co.*, 165 N. Y. 78, 87; *Hervey* v. *R. I. Locomotive Works*, 93 U. S. 664, 671.

It is penalizing creditors and stockholders of a corporation to seize their property and destroy their rights without any provision for compensation. Certainly the Soviet Government is favored by the acquisition of property for which it has paid out nothing. See Sec. 610, *Restatement of the Law of Conflict of Laws.*

In *Banco De Vizcaya* v. *Don Alfonso*, (1934), 151 L. T. R. 499, it was held that a Spanish decree that purported to confiscate the property of the former King of Spain and appropriate it to the Government of Spain was a penal law and would not be enforced by the English courts for that reason. The Court said, at page 501: "* * * the penalty imposed is seizure by the State for its own benefit of all the defendant's properties, rights, and grounds of action. * * *"

It is for the courts of the forum to determine whether a law is penal or not, and Executive acceptance of the purported assignment here cannot be considered as negativing the penal nature of the Soviet decrees of confiscation on which the United States must rely for title under the purported assignment. These Soviet decrees were penal in nature and as such not enforcible in the forum.

D

The Law of New York Must Be Applied Here as the Defendants are Executors Subject to the New York Surrogates' Court for the Administration of the Amount Claimed

The deposit here is held by executors who are accountable to the Surrogates' Court of New York. This has important consequences. A Federal court may not interfere with a state court's jurisdiction or control of a *res* under the administration of a state court, although suits may be brought *in personam* in a Federal court to enforce a personal liability in respect to a *res* subject to the administration of a state court. In such a case the suit merely serves to establish a debt or a right to share in the property in question. But this adjudication in the Federal court must not disturb the control of the state court. *Byers* v. *McAuley*, 149 U. S. 608; *Waterman* v. *Canal—Louisiana Bank Co.*, 215 U. S. 33; *U. S.* v. *Bank of New York and Trust Company*, 296 U. S. 463; *Commonwealth Trust Co. of Pittsburgh* v. *Atwood*, 78 F. (2d) 92, 94. When such a claim has been established in a Federal court as to existence, amount and status, it leaves the district court and enters the surrogate's court of the state, where it takes its place and share of the estate as administered by that court.

But the suit here is not brought against the executors *individually* for matters arising out of their duties. *Watkins* v. *Madison County Trust & Deposit Co.*, 24 F. (2d) 370. It

is brought against them *as executors*. The action brought is *in personam*, but the claim is not for a personal liability, as for a tort. It is sought to claim a deposit held by persons in their capacity as executors appointed by the Surrogates' Court of New York. It is clear that all that can result from this suit is the establishment of a debt or right to share in the property in question *under the administration of the Surrogates' Court of New York. Yonley* v. *Lavender*, 88 U. S. 276; *Byers* v. *McAuley, supra; Waterman* v. *Canal—Louisiana Bank, supra.*

It was said in *Wickham* v. *Hull*, 60 Fed. 326, 330: "The judgment simply determines the existence of a claim against the estate, and adjudges the amount thereof, 'but the debt thus established must take its place and share of the estate as administered by the probate court, and it cannot be enforced by process directly against the property of the decedent' *Byers* v. *McAuley*, 149 U. S. 620." See also: *Watkins* v. *Eaton*, 183 Fed. 384, 388; *McClellan* v. *Carland*, 187 Fed. 915, 920; *J. Elwood Lee Co.* v. *Grace Hospital*, 206 Fed. 994; *American Baptist Home Mission Society* v. *Stewart*, 192 Fed. 976, 979; 1 *Cyc. Federal Procedure*, p. 202, p. 231, *et seq.*; 15 *Corpus Juris*, p. 1168; *Harrison* v. *Moncravie*, 264 Fed. 776, 779. Cf. *Tussing* v. *Central Trust Co.*, 34 F. (2d) 312, 315, and *Bedford Quarries Co.* v. *Thomlinson*, 95 Fed. 208. The United States cannot avoid the law of New York by suing in its own court when the decisions of its own court are clear that any claim established therein in respect to an estate in administration under a state court must go back to such state court for enforcement.

This being so, the New York rules of decision should apply in the Federal Court. Otherwise a plaintiff might by choice of court alone be able to secure rights in respect to funds held as officers of a court of a State not allowed by the law of that State. While a non-resident creditor of an estate may sue the resident executor in a Federal Court and obtain a judgment, he cannot issue execution on the judgment but must go to the probate Court for payment.

Yonley v. *Lavender,* 88 U. S. 276, 279-280. Of course, the probate Court will be governed by the law of the State whose Court it is. In the case at bar the Surrogate's Court could not give effect to the Soviet decrees of confiscation without violating the declared law and policy of the State of New York.

It has been said that in a suit such as the instant one—"the National Courts administer the laws of the state of the domicile of the decedent, and in the enforcement of these laws they uniformly follow the rules and decisions which govern the state tribunals in all cases in which these rules and decisions violate no right secured by the constitution or laws of the nation. *Aspden* v. *Nixon,* 4 How. 467, 498, 11 L. Ed. 1059; *Walker* v. *Walkers Ex'r.,* 9 Wall. 743, 754, 19 L. Ed. 814; *Yonley* v. *Lavender,* 21 Wall. 276, 22 L. Ed. 1043; *Byers* v. *McAuley,* 149 U. S. 609, 615, 13 Sup. Ct. 906, 37 L. Ed. 867; *Security Trust Co.* v. *Black River National Bank,* 187 U. S. 211, 227, 237, 23 Sup. Ct. 52, 47 L. Ed. 147." *Schurmeier* v. *Connecticut Mutual Life Ins. Co.,* 137 Fed. 42, 44. See also *Alice E. Mining Co.* v. *Blanden,* 136 Fed. 252, 254. The petitioner's argument, based on the B. & W. Taxi Co. case (276 U. S. 518), that Federal courts are not necessarily bound by the decisions of the State courts as to a matter of public policy of the State, is not applicable here, as there is no reason to suppose that these decisions are unsound. On the contrary, they are supported by fundamental principles of the common law.

E

The Decisions in England and Other Countries in Which This Question Has Arisen Are in Accord With the Law of New York

The English Courts have decided that the confiscatory decrees of the Soviet Government do not affect private property outside of Russia at the time of the decrees.

In *The Jupiter* (No. 3), (1927) P. 122 (aff'd Ct. of Appeal, 1927 P. 250, 255), the Jupiter was one of a fleet of boats registered at Odessa in the Ukraine. This fleet left Odessa before the Russian confiscatory decrees became effective in respect to the fleet, proceeded to Marseilles in France and there operated. Later the French Courts appointed an administrator for the fleet. The Master of the Jupiter sailed the boat to England and delivered it there to a representative of the Soviet Government who purported to sell it through the instrumentality of an English company to an Italian company. The Court of Appeal held that the Jupiter could not be claimed by the Soviet Government and that the title of the French administrator would be recognized since the confiscatory decrees could not affect property actually located in Russia at that time. The lower Court said (p. 144): "If the Jupiter was not within the territory of the R. S. F. S. R. I do not see how the mere passing of a decree could transfer the property. This seems to me to be recognized in all the cases." On appeal LAWRENCE, L. J., said, at page 255: "In my opinion the determining factors in this case are: (1) That the nationalizing decrees of the U. S. S. R. do not operate on property outside the territory of that Republic, whether such property belonged to a Russian citizen or not; (2) that the Jupiter was not at the date when those decrees were promulgated, and has not since been within the territory of that Republic; and (3) that at the time when the Jupiter was handed over by the Master to the U. S. S. R. she was in the lawful possession of the French provisional administrator." It may be noted that our case is a stronger one for the denial of extraterritorial effect to foreign confiscatory decrees, because a vessel such as the "Jupiter," is for some purposes deemed a part of the territory of the country to which she belongs. *U. S.* v. *Rodgers,* 150 U. S. 249.

See also, *Russian Bank for Foreign Trade,* (1933), Ch. Div. 745, 767, where the Court said, "If the debt was primarily recoverable in London, I am of opinion that it was

not affected by the Soviet legislation, even though it was due to a person who was a Russian subject at the date of the nationalization decrees. Its locality must be taken to be the place where the debt was in the ordinary course recoverable. * * * The decrees in question could not according to our laws have the effect of extinguishing the debt, if locally situate here, or of transferring it to the Soviet Republic. * * * Moreover, it is evident that our courts have never entertained the view that a debt incurred here by a foreign corporation permitted to carry on business here under the English law can be discharged by a foreign statute."

See also *Russian Commercial and Industrial Bank* v. *Comptoir D'Escompte de Mulhouse* (1925) A. C. 112, 125; *Lecoutourier* v. *Rey* (1910) A. C. 262; *First Russian Insurance Co.* v. *London & Lancashire Ins. Co., Ltd.* (1928) Ch. Div. 922; *Sedgwick, Collins & Co.* v. *Rossia Ins. Co. of Petrograd,* 1926 K. B. 1, 15 (affirmed, 1927 A. C. 95).

In the case of *Luther* v. *Sagor,* (1921), 3 K. B. 532, 545 the court said, "The question before the court is as to the title to goods *lying in a foreign country* * * *" (italics ours), and on this ground this case was distinguished in the more recent case of *The Jupiter, supra* (1927 P. at p. 140). The case of *Lazard Brothers* v. *Midland Bank* (1933) A. C. 289, cannot be relied on by the plaintiff. Here it was expressly stated by Lord Wright, at page 302: "No question is here involved of the extra-territorial effect of legislation, confiscatory or otherwise * * * Nor do I think it necessary to express any opinion about the status of assets in England, a matter not in these proceedings." In England the closest the Soviet government has yet come to recovering property claimed located in England is in the cases of *Union of Soviet Socialist Republics* v. *Onou,* 69 Sol. J. 676 (K. B. May 13, 1925), and *Union of Soviet Republics* v. *Belaiew,* 42 T. L. R. 21. But here no question of confiscation was concerned; the property claimed was clearly that of the

Russian government in each case. In the first case it was only held that the Soviet government was entitled to state records and archives located in England of former Russian governments. In the second, that the Soviet government was entitled to papers and documents of its predecessor government in the hands of a custodian in England.

The law of other nations is in accord. See, *Nebolsine, The Recovery of the Foreign Assets of Nationalized Russian Corporations,* 39 Y. L. J. 1130. See, *Ginsberg* v. *Deutsche Bank,* (1928, Justice WOCHENSCHRIFT 1232, 1233, Kammergericht, Berlin), where the court said: "The assets of the nationalized Russian businesses situated abroad do not belong to the Russian State"; *Council of Russian Orthodox Community in Copenhagen* v. *Legation of R. S. F. S. R.,* (1925-26, Ann. Dig. of Int. Law cases 24, Sup. Ct. Denmark); *Wilbuschewitz* v. *Zurich* (1926, 53 Clunet 1110, 1113, 1925-1926 Ann. Dig. of Int. Law cases, 96, Trib. Fed. Switzerland); *Etat Russe* v. *Ropit,* (1925, 52 Clunet 391; 53 Clunet 667, 1926; aff'd 1928 Cour de Cassation, 55 Clunet 674, France). In this case last cited the highest court of France said: "No one in France may be compelled to surrender his property, unless it be for public use and in consideration for a just and previous compensation; * * * this rule, inserted in our codes and asserted in our successive constitutions, is one of the fundamental bases of our social institutions; * * * it cannot be made to yield before the stipulations of foreign legislation without profoundly disturbing the order established on the territory of the Republic." "Respect for property and for the inviolability of the rights property gives birth to," were deemed to preclude the French courts from giving effect to Russian decrees purporting to appropriate and nationalize private property located in France. The Court here might well have been deciding under the doctrine of the Fifth Amendment of *our* constitution. It may be added that in all of these cases, except the Swiss case, the question was decided after the recognition by Russia of the country concerned.

In the more recent case of *Cockerill* v. *La Union et Phenix Espagnol,* Cour d'Appel de Paris (12.23.30), 58 Clunet 400 (affd. 61 Clunet 662), the court said: "The French courts will not give effect in France to the legislative acts of a foreign Government even though recognized when they are contrary to French public policy and will not give any effect to those decrees which in opposition to the principle contained in Article 545 of the Civil Code, pronounce the pure and simple confiscation of private property. From which it follows that the Soviet decrees cannot invest the Russian state with the rights which the Russian Transport Company possessed in France." See also, *Habicht, The Application of Soviet Laws and the Exception of Public Order,* 21 Amer. Journal of International Law, 238.

F

It Is a Universal Principle of Law that Foreign Decrees of Confiscation Will Only be Recognized As Far As Property Actually Located in the Territory of the Confiscating State is Concerned

Decrees of nationalization, appropriation and confiscation are not given effect except as to property actually located in the jurisdiction of the country passing such decrees. While recognition may act retroactively to validate acts performed and decrees enacted prior to recognition by the nation later recognized, it does not validate acts performed prior to recognition which purport to affect private property rights *outside the borders of the territory of the nation so subsequently recognized.* See: *H. T. Cottam & Co.* v. *Commission Reguladora,* 149 La. 1026, 90 So. 392, 394-395. While to some extent tax laws of the United States are given what may be deeded extra-territorial effect, it is one thing to tax; it is wholly another to take all of the property out of which the tax arises. In *Underhill* v. *Hernandez,* 168 U. S. 250, 253 it was said that the courts of this country

would not sit in judgment of the acts of another government "done within its *own* territory." (Italics ours.) In *Rose* v. *Himely*, 4 Cranch 240, 278, it was said: "A power to seize for the infraction of a law is derived from the sovereign, and must be exercised it would seem within those limits which circumscribe the sovereign power." Cf. *Baglin* v. *Cusenier Co.*, 221 U. S. 580, 596-597; *Second Russian Insurance Co.* v. *Miller*, 268 U. S. 552, 559-560. In turn, the laws of the United States itself will not be interpreted to allow a seizure in another country of property located there. *The Apollon*, 9 Wheat, 362, 367.

In *Lehigh Valley R. Co.* v. *State of Russia*, 21 F. (2d) 396, 401, Judge MANTON said: "It is only the acts performed in its own territory that can be validated by the retroactive effect of recognition. Acts theretofore performed outside of its own territory cannot be validated by recognition." See also *Second Russian Ins. Co.* v. *Miller*, 297 Fed. 404.

In *Frenkel & Co.* v. *L'Urbaine Fire Ins. Co.*, 251 N. Y. 243, where French law forbade the performance of contracts entered into between Germans and Frenchmen, it was held that effect would not be given in this country to such a confiscatory mandate of a foreign power. See also, *Holzer* v. *Deutsche Reichsbahn Gesellschaft*, 159 Misc. 830. In *Hamilton* v. *Accessory Transit Co.*, 26 Barb. 46, 50 a decree of the Nicaraguan Government purported to annul and abolish a Nicaraguan Corporation. It was held that the decree was an exercise of despotic power, and was a complete nullity as to property in the United States, the court saying: "The decree thus made can have no effect, except as to property that might be actually grasped by the power that issued it. Its main object was (on its face) to seize the property of the company. Certainly our courts would not aid in that part of it, except that if the property actually within that state were seized there, and the title there lawfully transferred, the transfer of such property would be sustained here."

(1)

Confiscation Involves More Than the Regulation of the Internal Relations of a Corporation

Of course it is clear that we are not dealing here with the dissolution of a corporation in the sense in which we understand that term. Dissolution to us means, besides termination of the corporate existence or its quasi termination, where, as frequently happens, it is kept alive for the purposes of winding up, an orderly liquidation of assets for the benefit of creditors and stockholders, quite different from the destruction of the corporation, the confiscation of its assets, and the deprivation of the rights of its beneficiaries. Cases dealing with orderly liquidation have nothing in common with what happened here. The Soviet Government did not dissolve the Metal Company and constitute itself as successor in the sense in which those terms are familiar to us. It is not like the Superintendent of Insurance upon liquidation of a defunct insurance company nor like a statutory receiver of the assets of a failed corporation nor like the trustees in dissolution of a company whose corporate existence has expired. All of these are familiar processes of civilized law with which the courts know how to deal. Far different is the enforced destruction of living rights or the confiscation of property by force without compensation. That Russian law may govern the legal relations of the members of a Russian corporation to the corporation and to each other does not answer the question in this case. The confiscation is not local in Russia as here urged and more than the regulation of the internal corporate relations is concerned. *Canada Southern Railroad Co.* v. *Gebhardt*, 109 U. S. 527, is not in point. A similar argument was rejected by this Court in *Second Russian Insurance Company* v. *Miller*, 268 U. S. 552. The Court said (p. 560),

"Nor does *Canada Southern Ry. Co.* v. *Gebhardt*, 109 U. S. 527, relied upon by appellant, support the contention. That case only laid down the doctrine recently affirmed by this Court (*Modern Woodmen of America* v. *Mixer*, 267 U. S. 544) that the legal relations of the members of a corporation to the corporation and to each other must be regulated and controlled by the law of the jurisdiction in which the corporation is organized, and it extended the doctrine so as to make it applicable to mortgage security holders having a common interest in the corporate property. The Russian ukase however did not purport to regulate the internal relations of the corporation to its members or lien holders. By its terms it is applicable indiscriminately to individuals and all classes of associations and corporations, and apparently undertakes to deal with contracts of every kind. It cannot be brought within the purview of the rule established in *Canada Southern Railway Co.* v. *Gebhardt* and *Modern Woodmen of America* v. *Mixer*, *supra*."

In *Canada Southern Ry. Co.* v. *Gebhardt*, 109 U. S. 527. it was held that Canada could validly enact that the action of a majority of bondholders of a Canadian corporation should bind a minority in the United States as to an alteration of security in a reorganization of bonds of a Canadian mortgage. The statute in question merely permitted a necessary adjustment of the security; it was not appropriated by the state itself stepping in to wipe it out entirely. Moreover the court there took care to point out (p. 537), that the question was in respect to "security on a mortgage of property * * * situated entirely within the territory of a foreign government." The doctrine of this case, then, is only to the effect that a corporation will be considered discharged from liability everywhere only when it acts under proper laws of the state of its incorporation to change its powers and obligations in respect to a real regulation of its internal relations. In our case there is no question of the corporation acting under proper laws, but rather an intervention of the state of incorporation itself to appropri-

ate; in our case there is no question of only the readjustment of rights, but rather they are wiped out entirely by outright confiscation; and in our case the property concerned is situated not within, but outside the state of incorporation. Thus the principle of the *Gebhardt* case is clearly inapplicable here.

Whether the Metal Company is extinct or has an existence or what the powers of the sovereign may be with respect to its internal relations is not the issue. So far as the opinion of the Circuit Court of Appeals in the earlier case (77 Fed. 2nd 866) may be of importance in view of its decision, it can scarcely be relied on by the Government in this case in view of the decision of the same Court here. It may be granted that the decrees were effective in Russia to extinguish the corporate existence of the Metal Company, but decrees so operating in Russia cannot be considered as having any extra-territorial effect as to property in other countries.

The last sentence of paragraph VII of the Second Amended Complaint in the case at bar alleges as follows:

> "The said duly enacted laws, decrees, enactments and orders of the Russian State, including the said decree of June 28, 1918, did not provide for payment of the claims of creditors of the Metal Company except for the payment of salaries and wages to employees of the Metal Company, and did not provide for payment of compensation to the stockholders of the Metal Company upon the nationalization and appropriation of all of its property and assets" (R., p. 4).

POINT II

Public Policy is Opposed to the Plaintiff's Contentions.

The question in this case is whether the United States, as the purported assignee of a foreign government claiming ownership by confiscation of a private bank deposit in New York, is entitled to recover the amount of the deposit from

the bank. This is a question of the title to private property. It is not one of foreign relations or of the action of the Executive in his proper sphere. It is essentially a question of State law. The State law says that the title to property within the State, including cash deposited in banks there, may be transferred or assigned to an assignee and the assignee may recover the deposit from the bank under certain circumstances. None of these circumstances include an alleged assignment based on the confiscatory decree of a foreign power. In this respect the law of New York is probably no different from that of any other State. If this be so, it is as much the duty of the federal courts as it is of the State courts to so declare. If there is a separate federal common law that law is based on the customs, laws and rules of decision of the common law. The common law in its approach to questions of the conflict of laws is territorial. The jurisdiction of a state or nation over property within its borders is recognized, and in proper cases will be enforced in the forum. In the same way the forum insists upon the recognition of its right to lay down the rules governing transactions with respect to property within its territorial limits. As we have shown, the State within which a bank deposit is made and remains has full dominion over that property. American law is here involved and not Russian law. The cases cited by the petitioner for the proposition that the New York courts recognize the confiscatory decrees are cases where the property was in Russia or the contract was there to be performed. Recognition in such cases follows the usual territorial rule which is a part of our own law.

When, however, an American court is asked to give effect to confiscatory or penal laws of another nation contrary to our own laws, constitutions, public policy and sense of justice, the line must be drawn. Otherwise no property would be safe and no owner or holder of property here would be protected from foreign dictation. It is in the

sense of its relation to private property that we refer to the public policy of the state and nation. In that sense it is clear first, that our public policy must prevail, and second, that it prohibits recovery by the plaintiff in this case.

A

The Public Policy of the United States is Opposed to Recognition of the Plaintiff's Claim.

The public policy of the United States is to be found in the Constitution and the laws and the course of administration and decisions. *St. Louis Mining Co.* v. *Montana Mining Co.*, 171 U. S. 650, at page 655. See also *Mertz* v. *Mertz*, 271 N. Y. 466, 472.

In *People* v. *Hawkins*, 157 N. Y. 1, 12, it was said,

> "The courts have often found it necessary to define its (public policy's) juridical meaning, and have held that a state can have no public policy except what is to be found in its Constitution and laws."

The fundamental conceptions of our public policy are expressed in the Fifth Amendment, which declares,

> "• • • nor shall private property be taken for public use without just compensation."

The public policy of the United States itself forbids giving effect to confiscatory decrees of a foreign power purporting to appropriate and nationalize property located in this country. Chief Justice MARSHALL long ago said: "The sense of justice and right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated and private rights annulled." *U. S.* v. *Perchman*, 7 Pet. 51, 87. See also: *Miller* v. *United States*, 11 Wall. 268, 310. In *Ware* v. *Hylton*, 3 Dall. 199, 255, 281, it was said: "By every Nation, whatever is its form of government, the confiscation of debts has long been considered disreputable."

And this was stated in the very early and formative days of our country, in 1796. HYDE (*International Law*, Sec. 623) says: "Confiscation of debts is considered a disreputable thing among civilized nations of the present day." See also *Williams* v. *Bruffy*, 96 U. S. 176, 186-189, and *Hanger* v. *Abbott*, 73 U. S. 532, 536, 539, where it was said: "Individual debts, as a general remark, are no longer the subject of confiscation." Cf. *W. B. Worthen Co.* v. *Thomas*, 292 U. S. 426, 433.

In addition to the Fifth Amendment with its effect upon the United States, the Fourteenth Amendment provides that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. The Constitution of the State of New York provides that no person shall be deprived of life, liberty or property without due process of law nor shall private property be taken for public use without just compensation. Article 1, Section 6. Similar provisions are contained in the Constitutions of most or all of the States. The historic background of the Bill of Rights is too well known to require extended discussion.

The State of New York, through its legislature, has declared in effect that these decrees shall have no extraterritorial effect or validity as to property, including debts, within the State or obligations owing to the foreign corporation from persons, firms or corporations residing, sojourning or doing business in the State. (L. 1936, Chapt. 917, Sub. Div. 19, June 1936.)

In the face of the evidence of the public policy of the State and nation, it is difficult to see how the plaintiff can argue that the enforcement in this country of the Soviet decrees is not contrary thereto.

That argument is based upon the proposition that the public policy of the United States in the matter of foreign relations is to be determined by the Executive under the

Constitution. With that proposition in its proper application we have no quarrel. It does not apply here, however, because in the first place, there is no warrant for the assumption that the Executive in the performance of his functions can deprive anyone of his property, or confiscate private property, or by his acceptance of the alleged fruits of confiscation of another power enrich the United States at the expense of private persons by taking their property. The effect of confiscation is precisely as drastic where the United States sues as the assignee of the confiscating power as where it attempts directly to confiscate private property itself.

B

Acceptance of the Purported Assignment by the Executive Does Not Here Determine Our Public Policy.

The intimation that the Executive Department has declared the public policy of this country by the acceptance of the purported assignment would mean that by such acceptance he could strip from the legislature or the courts their proper powers of determination. Judge COXE said, in the District Court, in *United States* v. *Bank of New York and Trust Company,* 10 Fed. Supp. 269, 272, in respect to this very purported assignment,

> "The suggestion of the government that the Litvinoff assignment is not open to judicial construction requires little comment, for clearly where private rights are concerned, the mere assertion of the government that suit should be commenced does not preclude the courts from determining as a judicial matter the true meaning of the instrument involved."

Judge SWAN said, in the Circuit Court of Appeals below, in the present case,

> "Recognition permits Russia to resort to our courts and have its rights adjudged by the same principles as

> apply to other litigants. It expresses no policy as to what those principles are. Nor can the assignment and the bringing of suit give the assignee any greater right than the assignor had."

See also *License Tax* cases, 5 Wall. 462, 469; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 340.

As an expression of public policy the Constitution cannot be overriden by an attempted Executive confiscation. *Brown* v. *U. S.*, 8 Cranch 110, 123, 127, 128. A treaty cannot change or violate the Constitution, and even the treaty power will not allow the Executive Department to authorize what the Constitution forbids. *The Cherokee Tobacco*, 11 Wall. 616; *Geofroy* v. *Riggs*, 133 U. S. 258, 267. See also *In Re Beale*, 2 Fed. Supp. 899 (aff'd 71 F. [2d] 737). Executive acceptance here, even had it been within the treaty power could not have determined public policy contrary to the Constitution. As the Executive cannot confiscate property, this cannot be accomplished indirectly by accepting title to property in this country based on confiscation. The exhibits of the United States, 4, 5 and 6, attached to the Second Amended Complaint (R., pp. 14, 15), cannot take away from the courts the question of public policy here concerned. Those exhibits are self-serving and ineffective statements by an assignee. The State Department may be asked as to *matters of fact*, including recognition, particularly within the knowledge of the Department. *Underhill* v. *Hernandez*, 168 U. S. 250, 253; *Jones* v. *U. S.*, 137 U. S. 202, 216; *In Re Baiz*, 135 U. S. 403; *Ex parte Hitz*, 111 U. S. 766. But matters of intention and interpretation are entirely different. It is for the courts here to construe the purported assignment insofar as it affects rights to private property in this country, once the facts connected with it have been made clear, by a reference to the State Department if necessary.

Even a treaty is open for judicial construction; much more so should be a mere agreement attempting to affect

private rights. And as in the case of a treaty, it must not be construed to impair security to private property. Private rights remain the same after treaties negotiated between nations as before.

In *Strother* v. *Lucas*, 12 Pet. 410, 438, it was said: "No construction of a treaty, which would impair that security to private property, which the laws and usages of nations would, without express stipulation, have conferred, would seem to be admissible further than its positive words require." On a transfer of property from one sovereign to another, for example, public property may pass, but private property will remain undisturbed, together with the laws protecting it. *Chicago R. I. & P. R. Co.* v. *McGlinn*, 114 U. S. 542, 546; *Coffee* v. *Groover*, 123 U. S. 1, 9; *U. S.* v. *Percheman, supra*, at page 87; *Vilas* v. *City of Manila*, 220 U. S. 345, 357; *U. S.* v. *Moreno*, 1 Wall 400; *Williams, Confiscation of Private Property of Foreigners Under Color of a Changed Constitution*, 5 Amer. Bar Assoc. Journal, 152, 162. In *Tucker* v. *Alexandroff*, 183 U. S. 424, 437, it was stated that treaties should be construed "without the sacrifice of individual rights or those principles of personal liberty which lie at the foundation of our jurisprudence."

The petitioner's brief says that this Court will give effect to the decrees of foreign governments as to property within their territories whether or not confiscatory. But neither this nor *Luther* v. *Sagor* (1921, 3 K. B. 532), answers the question. In that case, the goods were located in a foreign country and the case was distinguished in *The Jupiter* (1927 P. at p. 140), on that ground. The fact that the right claimed by the United States was acquired by virtue of an assignment forming part of an international agreement can have no effect when we are dealing with private property. Neither the Executive nor anyone else can confiscate such property.

C

Recognition of Russia by the United States Does Not Change the Principles Here Involved.

The petitioner further argues that by recognition of the Soviet Government and the acceptance of the Litvinoff assignment, the Executive has declared in favor of the enforcibility of the right herein asserted. Aside from the question as to the proper interpretation of the assignment, and whether it was intended to include private deposit accounts in this country, it seems clear that neither recognition nor acceptance can affect the questions here presented in the face of the established public policy of the state and nation. Both the *Vladikavkazsky* and *Dougherty* cases were decided after recognition. To repeat what Judge CRANE said in the *Dougherty* case, *supra,* recognition does not compel our Court to give effect to foreign laws if they are contrary to our public policy. *U. S.* v. *Curtis Wright Export Corp.* is scarcely in point. That involved the question whether Congress had unlawfully delegated power to the President in the Joint Resolution of 1934, which was followed by a proclamation of the President thereunder, making it unlawful to sell arms to countries engaged in armed conflict in the Chaco. In view of the long series of embargo statutes referred to by the Court, there was found to be sufficient warrant for the discretion vested in the President.

In *Doe* v. *Braden,* 16 How. 635, 636, also referred to by the Government, the Court said at pages 658-9:

> "It was a part of the territory of Spain, and in her possession and under her government, until the ratifications of the treaty were exchanged. And until that time the rights of the individual owner, and the extent of authority which the government might lawfully exercise over it, depended altogether upon the laws of Spain."

Nor did the Litvinoff negotiations settle the claims of our citizens against the foreign government. On the contrary,

they failed to do so. That they were or were intended to be a step in the settlement of international claims cannot give the assignee any higher rights than were possessed by the assignor.

Clearly, the recognition of the Soviet Government had no effect on the question here presented. As the Court of Appeals said in *Vladikavkazsky Railway Co.* v. *New York Trust Co.*, 263 N. Y. 369, 379:

> "The fact that the present Russian government was not recognized was not the basis of our refusal to give effect to its decrees nationalizing corporations and confiscating their property. * * *
>
> "Prior to recognition we clearly intimated that our decision would have been the same if at the time recognition had been granted."

The difference between the true functions of the Executive and the Courts is well set forth in *Russian Reinsurance Co.* v. *Stoddard*, 240 N. Y. 149, 168:

> "The responsibility rests upon that branch of our government (the State Department) to determine in the first instance whether and upon what terms the Soviet government should hereafter be recognized, and the courts will determine * * * whether they will enforce any claim asserted by that government."

The question of public policy here is for the Courts to decide, and this function of the Courts cannot be taken away. *Jones* v. *Meehan*, 175 U. S. 1, 32.

While recognition of the Soviet Government permits it to resort to our courts and to have its rights adjudged by the same principles as applied to other litigants, it expresses no policy as to what those principles are. This is clearly stated by the Court below, which added that the assignment and the bringing of suit gave the assignee no greater right than the assignor had.

> "Confiscation of property within the United States is precluded by the Fifth Amendment to the Constitu-

> tion. * * * If the public policy of the United States is material, it would seem clearly adverse to a claim based on the Russian decree" (R. p. 25).

The petitioner now says that the Fifth Amendment has no application here; that it applies in terms only where there is a taking by the United States, and here that there is no taking from the Belmont firm, which is under obligation to repay the amount of the deposit, and that the Bank cannot set up the claim of a violation of the Fifth Amendment where its property is involved. But this does not answer the question. The true importance of the Fifth Amendment, as already pointed out, is as evidence of the law on this question of the conflict of laws and of the public policy of the State and Nation with respect to an attempted enforcement of foreign confiscation of property here. Obviously the enforcement of the confiscation is contrary to that policy. Probably, it is contrary also to the constitutional guarantee, and alien friends are entitled to the protection of the Fifth Amendment as well as citizens. See *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481. The language of the Court here is significant (p. 491):

> "As alien friends are embraced within the terms of the Fifth Amendment, it cannot be said that their property is subject to confiscation here because the property of our citizens may be confiscated in the alien's country. The provision that private property shall not be taken for private use without just compensation establishes a standard for our Government which the Constitution does not make dependent upon the standards of other governments."

See also *Burnet* v. *Brooks*, 288 U. S. 378, 400; *Deutsche Bank* v. *Cummings*, 83 F. (2d) 554, 557, 564, 565.

There is no question of confiscation by the United States as a war measure. See *Stoehr* v. *Wallace*, 255 U. S. 239, 242; *United States* v. *Chemical Foundation*, 272 U. S. 1; *Miller* v. *United States*, 11 Wall. 268, 304, 310. Private

property cannot be taken without just compensation, and the Constitution certainly will not allow the indirect performance or consequence of a prohibited act.

Not only is the alien protected in his rights and property, protection which is worthless if his depository is called upon to pay to someone else, but the Bank is entitled to protection from claims of those who cannot establish a good title to the deposit account.

As the petitioner has said, this is an action at law. In such an action, the plaintiff is not entitled to recover without first showing the validity of its own claim.

The mere fact that the United States is suing does not establish for itself any freedom from the authority opposed to the contention it must make here. *U. S.* v. *The Thekla*, 266 U. S. 328, 339; *Folk* v. *U. S.*, 233 Fed. 177, 192; *U. S.* v. *Midway Northern Oil Co.*, 232 Fed. 619, 631; *Sweet* v. *U. S.*, 228 Fed. 421, 428; *Chase* v. *U. S.*, 222 Fed. 593, 596; *U. S.* v. *Stinson*, 197 U. S. 200, 205; *Central Trust Co. of N. Y.* v. *Treat*, 192 Fed. 942; *U. S.* v. *Walker*, 139 Fed. 409, 412; *The Falcon*, 19 F. (2d), 1009, 1014.

> "It can require no argument to show that a transfer of any claim to the United States cannot give to it any greater validity than it possessed in the hands of its assignor." (*United States* v. *Buford*, 3 Pet. 12, 30.)

Under the second amended complaint, the plaintiff must establish a clear legal title to the deposit. As its title must be based on the Russian decrees, the plaintiff cannot succeed unless it can establish that these decrees must be given extra-territorial effect with respect to private property here.

As comity will not be extended to allow the enforcement of foreign revenue, penal or confiscatory decrees, or decrees contrary to public policy, it cannot be resorted to here give effect to decrees of confiscation clearly opposed to our public policy.

In discussing the public policy of New York the petitioner relies on cases where the property was not here. In the

Salimoff case it was in Russia and in the *Dougherty* case the contract had been made in Russia and was there to be performed. Attempt is made to harmonize these and the *Vladikavkazsky* case, where the property was in New York, by adopting a narrow interpretation of the language there used. But the harmony is readily obtained if we recognize the distinction based on territorial jurisdiction over the property concerned.

We have no quarrel with the so-called Soviet plan of national economy. It is their business and not ours. We do say that they cannot confiscate property here and the *Vladikavkazsky* case and other New York cases give this support. Surely no one can say that the New York Court has not definitely said that these decrees are contrary to our public policy. Whether payment is to be made to the plaintiff in this case is not a question of Russian but of American law.

The statute did not divest the plaintiff of any rights, if it had none before enactment. The *Vladikavkazsky* case shows that there were none.

Finally, the Government maintains that the federal courts should not follow a local public policy in a case involving the international relations of the United States. But this case does not involve international relations of the United States in their true sphere. If the present Russian Government had at all times been recognized by our Government, the result would have been the same. There is no difference on this point in the law of the state or the nation. Rather than international relations, this case involves title to private property in the State of New York. This cannot be taken or affected by an executive agreement.

The cases cited by the Government to show that the federal courts sometimes know better than the state courts what the law is do not affect the question. There is no real doubt about the law, and hence the result does not in essence subject the enforcement of any right acquired by the United States under the agreement to the varying and uncertain

policies of each of the states. It is merely an application of what is probably universal law in this country and in others to a question of private property.

Where treaties and international undertakings have involved private rights *the courts* may find their rule of decision from their consideration of the treaty or undertaking. The interpretation of treaties, when ambiguous, devolves upon *the courts*, as does the interpretation of ambiguous contracts. See *U. S.* v. *Arredondo*, 6 Pet. 691; *Head Money Cases*, 112 U. S. 580, 598; *U. S.* v. *Rauscher*, 119 U. S. 407, 418; *Fraenkel, Juristic Status of Foreign States*, 25 Col. L. Rev. 544, 548.

There could have been a recognition of Russia without an approval of *all* of the legislation of the Russian State, of legislation hitherto always deemed abhorrent to our concepts of public policy and right, of confiscatory decrees in respect to property in this country. Therefore it cannot be said that recognition of the Soviet Government as a *de jure* government carried with it a recognition of such legislation, and it cannot be asserted that the Executive, through the act of recognition, has made any determination that these confiscatory decrees, *so far as they affect private property in this country*, are not contrary to public policy. This is not the necessary consequence of the act of recognition (although Judge MANTON'S dissent in *U. S.* v. *Bank of New York and Trust Company*, 77 F. [2d] 866, 878, is based on a contrary assertion). Recognition cannot preclude the courts from a consideration of public policy here because recognition does not determine the question. But even if it could be deemed that recognition provided some sort of Executive approval for these confiscatory decrees, the courts are still not precluded, for this is a matter of law for their judicial determination. See, *Borchard, The Unrecognized Government in American Courts*, 26 Amer. Journal of Int. Law, 261, 271.

And even as recognition does not determine public policy as to private property rights here, neither does acceptance

of the purported assignment constitute a declaration of public policy that binds the courts in dealing with private rights. Under our jurisprudence the Executive is only one branch of the Government. The People are sovereign, and Executive fiat cannot establish the public policy of the nation or state as to private property. Public policy as to private rights is a matter of law. Rules of law and not Executive command build up such public policy and to the judicial branch of our Government is entrusted the enunciation of these rules of law, to which the acts of the Executive are themselves subject. The whole theory of our Government with its system of checks and balances would fall if the Executive could at any time proclaim public policy as to private property and be thus enabled to overrule the courts as guardians of the Constitution and laws of this country.

The Court below construed the new Section 977-B of the New York Civil Practice Act as providing that the title of the confiscating government is not to be recognized at least until after the expiration of the period within which creditors or stockholders may claim it thereunder (R., p. 25). But if the arguments advanced by us on the principal questions here involved are sound, plaintiff should not be allowed recovery in this action in any event. The question here is whether it is in accord with public policy to uphold a title in the plaintiff to private property in this country that would destroy rights recognized here. These rights the Executors must defend, and would be in danger of surcharge under New York law, if they did not do so. Hence the question should be decided on the merits. (1)

---

(1) As stated in the brief of the United States (Footnote, p. 42), a receiver was appointed of the assets of the Metal Company on June 25, 1936, under the New York Statute, who has served a demand on the respondents for the payment of the deposit account. This demand has not been complied with.

POINT III

It is Questionable Whether the Litvinoff Letter Assigned Title to the Deposit to the United States.

The Court below held that the language of the Litvinoff Letter (R., pp. 12-13) was sufficiently broad to cover the deposit account here in question (R., p. 23). That Letter states in substance that the U. S. S. R. will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due to it, as the successor of prior governments of Russia, or otherwise, from American nationals, and will not object to such amounts being assigned,

> "• • • and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialized Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment" (R., pp. 12-13).

The language is not clear and it seems arguable, at least, that it was not intended to include claims against private property based on the confiscatory decrees. The expression "amounts admitted to be due or that may be found to be due it" are susceptible of an interpretation that would restrict the assignment to governmental claims of the ordinary type. It is also arguable that the expression "due it • • • from American nationals" should not include amounts due to Russian individuals or corporations from American nationals. This would be consistent with the usual rule requiring reasonable interpretation of the document in case of doubt. As was said in *Rocca* v. *Thompson*, 223 U. S. 317, 332,

> "It is further to be observed that treaties are the subject of careful consideration before they are entered into, and are drawn by persons competent to express

> their meaning and to choose apt words in which to embody the purposes of the high contracting parties. Had it been the intention to commit the administration of estates of citizens of one country, dying in another, exclusively to the consul of the foreign nation, it would have been very easy to have declared that purpose in unmistakable terms."

If this deposit account is to be included, it must be because of the words "or otherwise". The decree annexed to the Second Amended Complaint states that certain enterprises

> "• • • which are located within the borders of the Soviet Republic, together with all their capital and property regardless of what the latter may consist,"

are declared the property of the R. S. F. S. R. It does not state *where* the latter may be. It would have been simple to have cleared up this doubt by appropriate language. The intention to confiscate property in Russia is clear. To go beyond those limits is not so clear. A more reasonable interpretation would be that it was intended to convey claims owing directly to the Government or its predecessors.

The words "or otherwise" may refer to its own transactions, and the combined phrase "as the successor of prior governments of Russia or otherwise" may include the Imperial and Kerensky governments and their claims and perhaps also the *de facto* and unrecognized governments of Admiral Kolchak in Siberia and General Deniken in South Russia. See *Nankivel* v. *Omsk All Russian Government*, 237 N. Y. 150; *Voevodine* v. *Government, etc., South of Russia*, 232 App. Div. 204. The Soviet, not wanting to acknowledge these as prior governments and not being content to waive claim to any assets such pretended governments might have in this country, may have wished to cover such claims by general language. See *State of Russia* v. *National City Bank*, 69 Fed. (2d) 44.

Moreover, in view of the amount of litigation past and pending at the time of the Litvinoff Letter, the covenant not to make claims for judgments rendered or to be rendered by American courts relating to property or rights in which the Soviets or its nationals might have had or might claim to have an interest, would seem to be unnecessary if by the first part of the Letter these rights had already been assigned.

It may be noted also that the so-called final settlement of the claims and counterclaims between the Soviet and the United States governments and the claims of their nationals, to which the Letter is expressed to be preparatory, did not take place.

A treaty cannot operate on individual rights in any event until ratified. *Dooley* v. *United States*, 182 U. S. 222, 230; *Haber* v. *Yaker*, 9 Wall. 32. How much less so can this Letter be deemed effective to disturb private rights in this country when it has not been shown that the circumstances upon which, in effect, the assignment depended, have been fulfilled. The court below held that the language was sufficiently broad to permit of the construction that it covered claims acquired by confiscation of the property of Russian nationals. It is submitted that a better interpretation would be one which does not do violence to accepted principles of law or result in an interpretation requiring the courts to hold invalid action of the Executive contrary to our conceptions of law, public policy and justice.

The purported assignment here in question must be construed in conformity to recognized and accepted principles of international law and not in derogation of them. See *Delagoa Bay Railway Case*, 2 Moore, *International Arbitrations*, 1865, 1869; 21 *Amer. Journal of Int. Law*, 294; *Hyde, International Law*, Sec. 622; *Moore's Int. Law Digest*, Sec. 997. Where Mexican oil legislation has threatened the proprietary rights of Americans in Mexico the United States has been insistent upon protecting such rights. *Amer. Foreign Relations* (1931), page 143. Secretary of State

Kellogg wrote to the Mexican Minister of Foreign Affairs, July 31, 1926: "Lawfully invested rights of property of every description are to be respected and preserved in conformity with the recognized principles of international law and equity." *21 Amer. Journal of Int. Law, supra.*

But even assuming the application of the Litvinoff Letter, the arguments of the plaintiff are based on contentions that the Executive, not the courts, determines judicial public policy; that Executive fiat as to meaning precludes judicial construction of a treaty or Executive agreement; that action brought by the United States on an Executive document determines that it is not opposed to public policy; and that assets which are definitely in New York are in contemplation of law located in Russia—all of which are manifestly untenable.

Conclusion

WHEREFORE it is submitted that the judgment and order of the District Court in dismissing the Second Amended Complaint herein and of the Circuit Court of Appeals in affirmance thereof were correct and should be affirmed on this appeal.

Respectfully submitted,

CORNELIUS W. WICKERSHAM,
Counsel for Respondents.

G. FORREST BUTTERWORTH, JR.,
DANIEL E. WOODHULL, JR.,
of Counsel.

February, 1937.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 332.

UNITED STATES OF AMERICA,

Petitioner,

v.

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of August Belmont, Deceased,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

RESPONDENTS' REPLY BRIEF

CORNELIUS W. WICKERSHAM,
Counsel for Respondents.

G. FORREST BUTTERWORTH, JR.,
DANIEL E. WOODHULL, JR.,
of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 532

UNITED STATES OF AMERICA,
Petitioner,

against

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of August Belmont, deceased,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' REPLY BRIEF

Upon the argument, the Court granted leave to respondents to file a brief in reply to petitioner's reply brief. A careful examination of the latter leads us to believe that in view of what has already been said, extensive comment is not required.

It is not believed that the diplomatic correspondence there referred to shows that either recognition of the Union of Soviet Socialist Republics as the *de jure* government of Russia, or the so-called Executive Agreement, were in any true sense conditioned upon the determination of the validity of the claim upon which the Govern-

ment sues in this case. On the contrary, the emphasis appears to have been upon the resumption of normal relations between the two countries.

The petitioner makes the point that there is no occasion for the application of any public policy in favor of the respondents. It seems to us sufficient in this connection to point out that the defendants are Executors who are accountable to the Surrogate's Court in the State of New York, and are also subject to plenary suit in the State Courts. They are entitled to protection against double jeopardy. The action is at law, and under ordinary rules, the plaintiff cannot succeed without showing the validity of its own title. The decision of this case is bound to affect the interests of all concerned, including the depositor, its Receiver, and any creditors or stockholders that there may be. The defendants, to that extent at least, in opposing claims that are not recognized in New York, are at the same time protecting the rights of any others as to the deposit which are or may be recognized in New York.

Respectfully submitted,

CORNELIUS W. WICKERSHAM,
Counsel for Respondents.

G. FORREST BUTTERWORTH, JR.,
DANIEL E. WOODHULL, JR.,
of Counsel.

March, 1937.

FILE COPY

DEC 11

CHARLES ELMOR

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 532

UNITED STATES OF AMERICA
Petitioner

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

BRIEF *AMICUS CURIAE* ON BEHALF OF PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

ROBERT J. SYKES
Attorney for President and Directors of the Manhattan Company, amicus curiae

ROBERT J. SYKES
WILLIAM C. MORRIS
Of Counsel

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 532

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UNITED STATES OF AMERICA,
Petitioner,

vs.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED.

—o—

BRIEF *AMICUS CURIAE* ON BEHALF OF PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

Report of Opinions Below

The opinion of the United States District Court for the Southern District of New York (R. 35-37) is not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit is reported in 85 Fed. (2d) 542.

Questions Presented

1. Whether decrees of the Russian Socialist Federated Soviet Republic nationalizing a Russian corporation and confiscating its property are effective to reach assets which have a situs in the State of New York.

2. Whether the assignment from the Union of Soviet Socialist Republics could transfer any title to the United States where the decrees appropriating the assets of the Russian corporation were not enacted by said Union, but were made by the Russian Socialist Federated Soviet Republic and the latter became the purported statutory successor to the corporation.

Opinions in the Courts Below

The District Court followed the ruling of Judge Coxe in the case of *United States* v. *Bank of New York and Trust Company*, 10 Fed. Supp. 269. (Affirmed on other grounds, 77 Fed. (2d) 866; 296 U. S. 463.)

The Circuit Court of Appeals, in its prevailing opinion, sustained the decree dismissing the bill of complaint of the petitioner and held that it is contrary to the public policy of the State of New York and the public policy of the United States to enforce a confiscatory decree of a foreign government with respect to property located within New York State at the date of the decree.

The Circuit Court rejected the contention of the Government that the acceptance of the Litvinoff assignment and the commencement of the present suit demonstrated the public policy of the United States as not opposed to the enforcement of the confiscatory decree and stated, in substance, that recognition permitted Russia to resort to

our courts and permitted it to have its rights adjudged by the same principles as are applied to other litigants.

The prevailing opinion further held that since a matter of title was involved, State law and not Federal law governed.

In view of the recent legislation in New York State to the effect that the title of the confiscating government is not to be recognized until after the expiration of the period in which creditors or stockholders may claim it, the complaint of the Government was dismissed *without prejudice to the commencement of an action at the expiration of the statutory period within which crediters or stockholders may present their claims against the fund.*

Judge Manton dissented upon the same grounds set forth in the case of *United States* v. *Bank of New York and Trust Company,* 77 Fed. (2d) 866.

Statement

The President and Directors of the Manhattan Company has a vital interest in substantive issues raised by the petition for a writ herein. The questions here presented are substantially identical with the questions on the merits presented in *United States* v. *Bank of New York and Trust Company; United States* v. *President and Directors of the Manhattan Company,* 296 U. S. 463. However, when the matter came on before this Court, the Court intimated no opinion on the merits, but held that the Federal courts had no jurisdiction of the particular suits.

The facts in the case on appeal herein have been set out in detail in the main brief submitted by the petitioner.

ARGUMENT

I

No question here arises as to the power of the Russian government to regulate the affairs of the corporation within its own territory or to render judgments as to persons within its jurisdiction.

The Government is attempting to extend the principle which permits the legislature of the domicile of the corporation to control and direct its affairs and those of its members to a situation which does not regulate the activities between corporate members, but totally destroys them.

When a foreign corporation enters this State and transacts business here, it must yield obedience to our laws. "For many purposes the fiction of its residence in the state of its origin must then be disregarded." *German-American Coffee Co.* v. *Diehl*, 216 N. Y. 57, 63; *St. Clair* v. *Cox*, 106 U. S. 350, 355.

Unquestionably, the decree in question was enacted for the enforcement of a local policy only within the State of Russia and was not intended to affect the validity of the dealings of the company in foreign jurisdictions.

In the present case the property in dispute is a bank deposit and since it is payable in this jurisdiction, it is governed by the law of the State of New York. *Security Bank* v. *California*, 263 U. S. 282, 285; *Pennington* v. *Fourth National Bank*, 243 U. S. 269, 271; *Vladikavkazsky R. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369.

Recognition did not change the established policy of the State of New York, which refused to enforce the

Soviet decrees as shocking to our sense of justice and equity. *Vladikavkazsky Ry. Co.* v. *N. Y. Trust Co.*, 263 N. Y. 369.

Since the issue is title to a specific *res* within the jurisdiction of New York State, the universal successor "must submit to the mandate of the sovereignty that has physical control of the property which he desires to reduce to his possession." *Clark* v. *Williard*, 294 U. S. 211.

II

The Government of the Union of Soviet Socialist Republics assigned to the United States "the amounts admitted to be due or that may be found to be due it as the successor of prior government of Russia, or otherwise." The United States does not claim the amount sued for is due the Union as the successor of any prior government of Russia but relies on the words "or otherwise," *i. e.*, by confiscation and appropriation.

However the assignment to the United States was not made by the foreign sovereignty dissolving the corporation, or by the State which took title to the assets of the dissolved corporation. The assignment of the amounts due is made by the Union of Soviet Socialist Republics (R. 25-29). The decree which purported to dissolve and nationalize the Russian corporation was enacted by the Russian Socialist Federated Soviet Republic (R. 14, *et seq.*).

Even if the Government's argument to the effect that upon dissolution the assets of the corporation shall pass to the person designated by statute and give the right to such person to all personal property wheresoever situ-

ated, there is nothing in the record showing that this person is the assignor. Assuming that the property passed to the Russian Socialist Federated Soviet Republic by virtue of the decrees, we have no allegation or any evidence in the record which shows that the Russian Socialist Federated Soviet Republic transferred its rights to the Union of Soviet Socialist Republics, so that the latter, in turn, could make an assignment to the United States. Until the United States cures this defect, it has no standing in our courts.

Each state has a right to declare policies and laws which are to govern within its jurisdiction. The recognition of a foreign government does not destroy the principles which have been in force for a number of years.

Nothing more is accomplished by recognition than to permit the recognized sovereignty to sue in our courts and to be bound by the principles controlling in our jurisdiction.

It is conceded by President and Directors of the Manhattan Company that there are many important cases now pending which involve substantially the same issues that are herein presented. Most of these cases are either under the jurisdiction of the Supreme Court of the State of New York or the Federal District Court of New York. The New York State Court has, by repeated decisions, refused to recognize a title founded upon Soviet decrees of confiscation. The tenor of the Federal Courts' decisions are similar. When the public policy of the forum is against confiscatory legislation, international comity has no place.

While it is admitted that a ruling by the Supreme Court of the United States is frequently desirable, we feel that the precedents against the Government are too well established to require it.

There is neither reason nor authority to sustain the contentions of the Government, and the petition for a writ of certiorari should accordingly be denied.

Respectfully submitted,

ROBERT J. SYKES,
Attorney for President and Directors of the Manhattan Company, amicus curiae.

ROBERT J. SYKES,
WILLIAM C. MORRIS,
Of Counsel.

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CHARLES ELMORE C
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IN THE

Supreme Court of the United States

OCTOBER TERM—1936.

No. 532.

UNITED STATES OF AMERICA,
Petitioner,

AGAINST

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of AUGUST BELMONT, deceased,
Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Petition and Notice of Motion to Intervene.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1936.

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UNITED STATES OF AMERICA,

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MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of AUGUST BELMONT, deceased,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Notice of Motion to Intervene.

SIRS:

PLEASE TAKE NOTICE that upon the petition of John R. Crews, temporary receiver of the assets in New York of Petrograd Metal Works, also known as Kompania Petrogradskago Metallicheskago Zavoda, and also known as Petrograd Metal Manufacturing Company, verified the 20th day of February, 1937, and upon all the pleadings and proceedings herein, the undersigned will move before a Term of this Court to be held at the Court House in Washington, D. C., on the 1st day of March, 1937, at 12 o'clock noon, or as soon thereafter as counsel can be heard, for an order allowing John R. Crews, temporary receiver

of the assets in New York of Petrograd Metal Works, also known as Kompania Petrogradskago Metallicheskago Zavoda, and also known as Petrograd Metal Manufacturing Company, appointed by the Supreme Court of the State of New York, Kings County, to intervene herein and to submit to the jurisdiction of this Court, and for such further or other relief as to this Court may seem proper.

Dated, New York, February 25th, 1937.

Yours, &c.,

SAMSON SELIG,
Attorney for Petitioner to Intervene,
No. 80 Broad Street,
Borough of Manhattan,
City of New York.

To:

STANLEY REED, ESQ.,
Solicitor General,
For Petitioner.

CADWALADER, WICKERSHAM & TAFT, ESQS.,
Attorneys for Respondents,
No. 14 Wall Street,
Borough of Manhattan,
City of New York.

Petition of John R. Crews.

IN THE
SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM—1936.

No. 532.

UNITED STATES OF AMERICA,

Petitioner,

AGAINST

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of AUGUST BELMONT, deceased,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

To the Supreme Court of the United States:

The petition of JOHN R. CREWS, respectfully shows to the Court, and alleges:

On the 25th day of June, 1936, by an order duly made by Mr. Justice Leander B. Faber, a Judge of the Supreme Court of the State of New York, I was duly appointed temporary receiver of all the property and assets, debts, equitable interests, rights and things in action, effects and estate, real and personal, tangible and intangible of Petrograd Metal Works, also known as Kompania Petrogradskago Metallicheskago Zavoda, and also known as Petrograd Metal Manufacturing Company, on the application of a stockholder of the said Petrograd Metal Works.

I duly qualified as such temporary receiver and filed the bond directed in said order and have made demand on the respondents herein.

I was appointed receiver pursuant to the provisions of Section 977B of the Civil Practice Act of the State of New York. Under this Act it is my duty to collect all assets of the Petrograd Metal Works in the State, and to advertise for and examine claims against the Corporation. This New York Statute not only sets up a procedure to be followed in the disposition of the corporate assets situated in New York, but sets forth in detail the classes of persons who are to be entitled to receive distribution, and the order in which the receiver is to make the distribution, and the disposition of the surplus remaining after the payment of all creditors.

Thereafter, a demand was duly served by me as temporary receiver on Morgan Belmont and Eleanor R. Belmont as executors of the Last Will and Testament of August Belmont, deceased, for the delivery to me of the assets in their possession within the State of New York belonging to the Petrograd Metal Works.

I desire to intervene in the action now pending in this court between the petitioner, United States of America, and Morgan Belmont and Eleanor R. Belmont, executors of the Last Will and Testament of August Belmont, deceased, respondents. The action was brought in the United States District Court for the Southern District of New York by the United States to recover the entire balance of a bank deposit made prior to 1918, with August Belmont and Company by the Petrograd Metal Works, of whose assets in New York I am now receiver. The United States claims title to said deposit by virtue of an assignment contained in an exchange of letters passing between the President of the United States and M. Litvinov, Commissar of Foreign Affairs of the Union of Soviet Socialist Republics under which the Union of Soviet Socialist Re-

publics was alleged to have assigned to the United States of America all amounts due or that may be found to be due it as successor of prior governments of Russia, or otherwise, from American nationals.

The complaint was dismissed by the District Court for failure to state facts sufficient to constitute a cause of action. On appeal to the Circuit Court of Appeals, the judgment dismissing the complaint was affirmed, and the case is now here on certiorari. I was appointed receiver as aforesaid after the argument of the appeal in the Circuit Court of Appeals.

If the petitioner is successful in the action brought by it, the result will be that it will take over all of the aforesaid bank deposit of the Petrograd Metal Works with August Belmont & Co. and there will be nothing left for the creditors and stockholders of the company, the assets of which I am receiver.

The reason why I have not heretofore asked permission to intervene herein is that it has only within the last few days and since the service of the Government's brief, been called to my attention that the Government is here arguing that the legislative expression of the public policy of New York, contained in the amendment to the Civil Practice Act (Section 977-b) cannot be considered by this Court, because that statute may only be invoked where a receiver, appointed pursuant thereto, is a party to the action. In this connection, the Government says at page 43 of their brief:

> "The court below cited this statute in connection with its statement that 'it is contrary to the public policy of the state of New York to enforce confiscatory decrees with respect to property located here at the date of the decree' (R. 24). • • •
>
> "Presumably the court had in mind the concluding sentence of Sec. 19 of the statute which reads:
>
> " 'Any receiver appointed pursuant to the provisions of this section may be substituted for such

corporation in any action or proceeding pending in the courts of the state or of the United States to which such corporation is a party and may revive any action which shall have heretofore or which may hereafter have abated, and such liquidation, dissolution, nationalization, expiration of its existence, or repeal, suspension, revocation, or annulment of its charter or organic law in the country of its domicile shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands, or choses in action of such corporation within the state or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business in the state.'

"The sentence quoted above is so phrased as to make it clear that the provision against according effectiveness or validity to nationalization decrees comes into operation only in those cases in which a receiver brings suit or has been substituted for the corporation in a pending action. Consequently this particular provision is not applicable to an action such as the one at bar where neither the receiver nor the corporation is a party."

I believe that the questions involved in this suit are of too great public importance and that the interests of the corporation of whose assets I am receiver are too greatly involved, to permit the decision of this Court to depend upon the subordinate question of who is or who is not a party to the present litigation, and for that reason I desire to be allowed to intervene.

Until the argument of the Government was called to my attention, I had no way of knowing that this argument would be made. I, therefore, believe it is of the utmost importance that I be allowed to intervene on this appeal in opposition to the petitioner herein.

On the 18th day of February, 1937, the Supreme Court of the State of New York, Kings County, the Court in

which I was appointed receiver, duly made an order authorizing and directing me to submit to the jurisdiction of this Court, and to apply to intervene on this appeal as aforesaid (a copy thereof is annexed hereto), and pursuant to said order, I do hereby, as receiver of the assets in New York of the Petrograd Metal Works, submit to the jurisdiction of this Court for all necessary purposes, and ask that I be given leave to intervene herein.

In similar circumstances this Court has recognized the right of intervention by interested parties in cases pending in this Court. Precedents for the granting of this petition in intervention will be found in *Guarantee Title & Trust Company* v. *United States*, 262 U. S. 733, 264 U. S. 200; *United States* v. *Terminal Railroad Association of St. Louis*, 236 U. S. 194, 199.

The granting of this petition in intervention will not prevent the decision by this Court of the questions of law arising on this record. I am prepared to and will adopt the motion to dismiss as filed in this record by the defendants-respondents, and consent that the pleadings be deemed amended in any respects made necessary by this intervention.

In order not to delay this appeal in any way, if permitted to intervene, I hereby waive service of any notice of argument, and am prepared to proceed with the appeal when reached.

JOHN R. CREWS,
Petitioner.

STATE OF NEW YORK, }
COUNTY OF KINGS. } ss.:

JOHN R. CREWS, being duly sworn, deposes and says: I am the petitioner in the foregoing petition; that I have read the foregoing petition and know the contents thereof; that the same is true of my own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

JOHN R. CREWS.

Sworn to before me this }
25th day of February, 1937. }

ALBERT DORF,
Commissioner of Deeds,
City of New York,
Kings Co. Clk's No. 25, Reg. No. 7018;
Term expires Oct. 15th, 1937.

Order.

At a Special Term, Part II of the Supreme Court held in and for the County of Kings in the Municipal Building, Borough of Brooklyn, County of Kings, on the 17th day of February, 1937.

Present:—Hon. Peter P. Smith,
Justice.

Maurice Edward Meyer and Alfred Schwartz, individually and as copartners, doing business under the firm name and style of E. M. Meyer & Co.,

Plaintiffs,

against

Petrograd Metal Works, also known as Kompania Petrogradskago Metallicheskago Zavoda, and also known as Petrograd Metal Manufacturing Company,

Defendant.

On reading and filing the annexed affidavit of John R. Crews, temporary receiver of the assets within the State of New York of the defendant above named, verified the 17th day of February, 1937, it is, on motion of Samson Selig, attorney for said receiver,

Ordered, that the said John R. Crews, as such receiver, be and he hereby is authorized and directed to apply to intervene in an action now pending in the Supreme Court of the United States in which United States of America is plaintiff-appellant and Morgan Belmont and Eleanor

R. Belmont, as executors of the Last Will and Testament of August Belmont, deceased, are defendants-appellees, and it is

FURTHER ORDERED that he be and he hereby is authorized and directed to submit to the jurisdiction of the Supreme Court of the United States for all necessary purposes in that regard.

P. P. SMITH,
Justice of the Supreme Court
of the State of New York.

Granted, Feb. 18, 1937.

JOHN N. HARMAN,
Clerk.

IN THE

Supreme Court of the United States

FEB 2
LES ELM

OCTOBER TERM—1936.

No. 532.

UNITED STATES OF AMERICA,

Petitioner,

AGAINST

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of AUGUST BELMONT, deceased,

Respondents,

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Brief of Petitioner to Intervene.

This is an application on the part of John R. Crews, receiver of the assets in New York of the Petrograd Metal Works, to intervene on this appeal. In the instant suit the United States seeks to obtain a judgment giving it the balance of a deposit with the banking firm of August Belmont & Company, belonging to the Petrograd Metal Works, being assets in the estate for which the receiver was appointed.

The receiver was appointed after the argument of the case in the United States Circuit Court of Appeals.

It is vital to the interests of the receivership that the claims of the Government to the funds in question be decided at the earliest possible moment. The Government has argued in its brief that the provisions of the statute under which the receiver was appointed, which set out the public policy of the State of New York, are not applicable in the present appeal because the receiver is not a party thereto.

It would be most unfortunate if the decision on this appeal should go off on the question of who is or who is not a party to the action, or as to what court has jurisdiction.

It is for the purpose of eliminating all these technical matters so that the very important questions involved can be fully and completely decided on the merits, that the receiver has obtained the order of the Court appointing him to submit to the jurisdiction of this Court and apply for permission to intervene.

This case involves the construction and effect of the letters passing between Mr. Litvinov and the President of the United States at the time of the recognition of Russia, bearing on the assignment of certain Russian funds, which questions were before this Court about a year ago in the cases of *United States* v. *Bank of New York and Trust Company, United States* v. *President and Directors of the Manhattan Company,* and *United States* v. *Louis Pink, as Superintendent of Insurance* (296 U. S. 463) at which time they were decided on jurisdictional grounds and not upon the merits.

The decision of the questions raised in this case are of immense and immediate importance, not only to the receiver of the Petrograd Metal Works, but to hundreds of creditors and stockholders of the various other Russian corporations which have funds in this country which are now sought to be obtained by the Government of the United States.

In the instant case the respondents do not claim ownership of the fund, and have no interest other than to avoid double payment. The receiver feels, therefore, that he is the real party in interest and is entitled to come in as a party and be heard on the argument.

Respectfully submitted,

SAMSON SELIG,
Attorney for Petitioner to Intervene.

SAMSON SELIG,
JOSEPH DAY LEE,
Of Counsel.

MAR 4 1
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM—1936.

No. 532.

UNITED STATES OF AMERICA,
Petitioner,

AGAINST

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of AUGUST BELMONT, Deceased,
Respondents.

Brief of John R. Crews, as Receiver, *Amicus Curiae.*

SAMSON SELIG,
Attorney for John R. Crews, Receiver, Amicus Curiae.

SAMSON SELIG,
JOSEPH DAY LEE,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1936.

No. 532.

UNITED STATES OF AMERICA,
Petitioner,

AGAINST

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of AUGUST BELMONT, Deceased,
Respondents.

Brief of John R. Crews, as Receiver, *Amicus Curiae.*

Opinions Below.

The opinion of the United States District Court for the Southern District of New York (R., p. 17) is not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit is reported in 85 Fed. (2d) 542 (R., p. 22).

Statement.

Plaintiff seeks, in this action at law, to recover a bank deposit made with the firm of Belmont & Company by a Russian corporation prior to 1918. Plaintiff's claim

of title rests upon (1) the making of the deposit by the Russian corporation, (2) the nationalization of that corporation and the confiscation of its assets by the Russian Government in 1918, and (3) the assignment of certain claims of the Russian Government to the plaintiff in the letters passing between the President of the United States and M. Litvinoff in November, 1933, when diplomatic recognition was accorded to the Russian Government by the President.

Defendants, who are executors of the estate of August Belmont (the banker) moved to dismiss the complaint on the ground that it did not state facts sufficient to constitute a cause of action. The motion was granted by the District Court, the judgment entered thereon was affirmed by the Circuit Court of Appeals and the case comes to this Court upon certiorari granted.

Subsequent to the argument of the appeal in the court below, John R. Crews was appointed, by the Supreme Court of New York, Receiver of the Assets in New York of the Russian corporation under the terms of a statute which became law in June, 1936, and which is known as Section 977-b of the Civil Practice Act. The Receiver moved to be allowed to intervene and become a party to the action, joining in the motion to dismiss the complaint. This motion was denied. Since the defendants make no claim to the deposit and are stakeholders only, the Receiver is the real party in interest and files this brief, *amicus curiae*.

Question Presented.

1. Whether the public policy of the State of New York, which is the *situs* of the debt represented by the bank deposit, permits the recognition of rights based upon confiscation of private property.

2. Whether the public policy of the United States differs from that of New York.

3. Whether, if there be a difference between the public policy of the United States and the public policy of New York, the courts of the United States sitting in New York are not bound by the public policy of the State of New York as expressed by the highest court of that State and by the Legislature of the State in the enactment of Section 977-b of the Civil Practice Act.

4. Whether the so-called "Litvinoff Assignment", properly construed, embraces the bank deposit in question

(a) in view of the language of the instrument;

(b) in view of the historical and legal background existing when the assignment was made.

5. Whether the President had the *power*, without authority from the Congress, to accept an assignment of a claim in suit?

Summary of Argument.

I.—The enforcement of rights based upon the confiscation of private property by a foreign government will not be given extra-territorial effect by the courts of New York, the *situs* of the debt in question, because such confiscatory decrees offend the public policy of the State of Ne wYork as laid down by its court of last resort and by its Legislature (Civil Practice Act, §977-b).

II.—The enforcement of claims based upon such confiscatory decrees also offends the public policy of the United States. Even if such enforcement does not offend the public policy of the United States, the courts of the United States, sitting in New York, must give effect to the public policy of the State of New York as laid down by its Legislature and courts.

III.—The parties did not intend by the "Litvinoff Assignment" to include assets located without the boundaries of Russia, formerly belonging to private Russian corporations. To give to the document the meaning contended for by the United States, renders meaningless paragraph "(a)" of the Litvinoff letter. Under paragraph (a) the Soviet Government agrees not to make any claim with reference to

> "rights or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest."

The claim against Belmont & Company is a right in which a Russian national may have had an interest. If the first paragraph of the letter was meant to carry an assignment of that right, paragraph (a) becomes meaningless because one does not agree not to make a claim to that which he has just assigned. It follows that the rights referred to in paragraph (a) (which includes the right in suit) were not the same rights as those which were assigned by the preceding paragraph.

The interpretation contended for by the United States ignores the historical and legal background existing when the assignment was made. The United States would have the Court hold that the parties intended, by the use in the first paragraph of the letter of the vague term "or otherwise", to include claims which the courts of the United States, of New York, of Great Britain, of France, of Germany, of Denmark and of Switzerland, had held unenforceable and which are based upon confiscatory decrees which the Government of Russia itself has said were not intended to have extra-territorial effect. In the light of this background it is inconceivable that, if the parties had intended to assign and to accept the assignment of such claims, they would not have described them with greater precision than by using the words "or otherwise".

IV.—The President is without power to accept from a foreign government the assignment of claims against American citizens, such as the one in suit.

The President has only such powers as are granted to him by the Constitution, or acts of Congress, and the powers incidental thereto.

The agreement with M. Litvinoff has never been ratified by the Senate or approved by Congress.

Claims such as the one in suit, could not have been enforced by the Russian government itself, because based on confiscatory legislation, they are violative of public policy.

The President has no power to instil into foreign legislation an authority which it does not possess *proprio vigore*. He cannot validate here decrees otherwise invalid, and thus harass and deplete the assets of American citizens.

ARGUMENT.

POINT I.

The public policy of the State of New York, which is the *situs* of the debt represented by the bank deposit, does not permit the recognition of rights based upon confiscation of private property.

The petitioner's claim is predicated upon the Soviet decree of confiscation, under which it is claimed that the Russian State nationalized and appropriated all of the assets of numerous corporations and organizations, including the Metal Company. Such decrees does not provide for the payment of claims of creditors of the Metal Company and does not provide for payment of compensation to stockholders of that Company (Record, pp. 3 and 4). The petitioner's claim, therefore, must stand or fall

on the enforcement of this Soviet decree by the Courts here.

It is well settled that the laws of one country are not enforced in another country as a matter of right, but only under principles of comity. *Bank of Augusta* v. *Earle,* 13 Pet. 519, 598; *Second Russian Ins. Co.* v. *Miller,* 297 Fed. 404, 408; affirmed 268 U. S. 552; *The Apollon,* 9 Wheat. 362; *Hilton* v. *Guyot,* 159 U. S. 113, 163-164, where the Court said:

> "No law has any effect of its own force beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call 'the comity of nations'."

And in *Matter of Accounting of Waite,* 99 N. Y. 443, at page 448, the Court said:

> "From all these cases the following rules are to be deemed thoroughly recognized and established in this State: (1) The statutes of foreign States can in no case have any force or effect in this State *ex proprio vigore,* and hence the statutory title of foreign assignees in bankruptcy can have no recognition here solely by virtue of the foreign statute * * * the titles of foreign statutory assignees are recognized and enforced here, when they can be, without injustice to our own citizens, and without prejudice to the rights of creditors pursuing their remedies here under our statutes; provided also, that such titles are not in conflict with the laws or the public policy of our State."

When, however, a foreign law sought to be enforced here offends our public policy, comity gives way to public policy and the foreign law will not be enforced by our

courts. *Huntington* v. *Attrill*, 146 U. S. 657, 675, where the Court said:

> "If the foreign law is a penal statute, or if it offends our own policy, or is repugnant to justice or to good morals, * * * we are at liberty to decline jurisdiction."

What, therefore is our public policy with regard to foreign legislation such as the Soviet confiscatory decree in question? The cases are numerous and are discussed at length in the brief of the respondents. Detailed analysis of them here would be only reiteration. But one case is so precisely in point and so conclusive upon the subject, that at the risk of duplication, we venture to discuss it. That case is *Vladikavkazsky Railway Company* v. *New York Trust Company*, 263 N. Y. 369.

That case, too, was brought to recover a bank deposit held by a New York bank to the credit of a nationalized Russian corporation. The plaintiff was the Russian corporation itself. The defendant pleaded the nationalization decrees of the Soviet Government as a bar to the prosecution of the action by the Russian corporation. In that case, too, it was strongly urged that recognition validated the acts of the Soviet government retroactively and that those decrees must, therefore, be given force and effect here. Almost every word of the opinion on these points could have been written for the instant case. The Court stated at pages 378, 379:

> "The deposit was made in New York City, the home of the bank; that is where the contract obligation was created and where it is by its terms to be performed, entirely outside Russian jurisdiction. Laws of foreign governments have extraterritorial jurisdiction only by comity. (*Huntington* v. *Attrill*, 146 U. S. 657, 669.)
>
> "The principle which determines whether we shall give effect to foreign legislation is that of

public policy. (*Russian Reinsurance Co.* v. *Stoddard, supra; Joint Stock Co.* v. *National City Bank*, 240 N. Y. 368, 377; *Russian Socialist Federated Soviet Republic* v. *Cibrario*, 235 N. Y. 255, 263.)

"Where there is confliction between our public policy and comity, our own sense of justice and equity as embodied in our public policy must prevail. (*Russian Socialist Federated Soviet Republic* v. *Cibrario, supra.*)

"It is hardly necessary to state that the arbitrary dissolution of a corporation, the confiscation of its assets and the repudiation of its obligations by decrees, is contrary to our public policy and shocking to our sense of justice and equity. That the confiscation decree in question, clearly contrary to our public policy, was enacted by a government recognized by us, affords no controlling reason why it should be enforced in our courts. (*Baglin* v. *Cusenier*, 221 U. S. 580.)

"We enforce the same principle even in regard to statutes of sister states. (*Barth* v. *Backus*, 140 N. Y. 230, 239.)

"The fact that the present Russian government was not recognized was not the basis of our refusal to give effect to its decrees nationalizing corporations and confiscating their property. During the period when those decisions were made, we recognized and enforced 'mere ordinary legislation', relating to 'every day transactions of business or domestic life'. (*Petrogradsky M. K. Bank* v. *National City Bank, supra; Matter of People* (First Russian Ins. Co.), 255 N. Y. 428, 432.)

"Prior to recognition we clearly intimated that our decision would have been the same if at the time recognition had been granted. (*James & Co.* v. *Second Russian Insurance Co.*, 239 N. Y. 248, 257.)

"The general statement contained in the opinion in *Salimoff & Co.* v. *Standard Oil Co.* (262 N. Y. 220), to the effect that recognition of a *de facto* government as a *re jure* government is retroactive in effect and validates all the acts of the government from the commencement of its existence, must

> be read in connection with its context and as so read it did not refer to acts sought to be given effect extraterritorially." *

Petitioner, realizing that the *Vladikavkazsky* case presents an insuperable stumbling block to its claim, attempts to distinguish it on the ground that there the question was "shall the law compel a debtor in this State to pay its debt or permit it to hold the property of its creditor indefinitely" and that "there was no refusal to recognize the Soviet Government's title, based on nationalized decrees, for no such question was presented" (Petitioner's brief, p. 40).

It is true that the Soviet government was not a party to the action, but the question of its title was nevertheless passed upon. The point of the decision was that the Russian corporation could maintain its own action for the deposit in spite of the nationalization decree on which the Soviet title is based. The conclusion is, therefore, inevitable that any claim of the Soviet government predicated upon the confiscatory statute, would not be enforced in New York courts.

But the petitioner is further in error in believing that the precise point of the Litvinoff assignment and the claim of the Russian government and of Petitioner was not before the Court, because after the decision, the defendant in the *Vladikavkazsky* case moved for reargument, and on the application for the reargument, stated as follows:

> "The correspondence between M. Litvinoff and the President of the United States, resulting in the fact of recognition of Russian was necessarily involved. Such correspondence was published in full

---

*In *Dougherty* v. *Equitable Life Ins. Co.*, 266 N. Y. 71, the Court recognized the authority of the *Vladikavkazsky* case as unimpaired. It directly based its decision that decrees of confiscation afforded a defense upon its view that the insurance policies there in suit were made in Russia to be performed in Russia and specifically provided for construction according to Russian Law. The Vladikavkazsky case has repeatedly been cited and followed by the New York Courts.

> in the newspapers (New York Times, November 18, 1933) and is clearly within the judicial knowledge of the court)."

(Then follows a copy of the correspondence between M. Litvinoff and the President.) The application for reargument then continues as follows:

> "The importance of this correspondence in connection with the decision of this Court is threefold.
>
> "First, I submit it bears upon what should be determined to be the public policy of this State.
>
> "Second, it demonstrates that the alternative assumed by this Court, that failure to allow recovery by the Vladikavkazsky Railway would be to allow the New York Trust Company indefinitely to retain the money is not necessarily so.
>
> "Third, it demonstrates that the New York Trust Company may be put in double jeopardy with respect to this very fund, since it is likely that the claim of the United States thereto will be definitely asserted in the Courts of the United States."

It will thus be seen that the Court was advised that the defendant bank would not be permitted "to hold the property of its creditor indefinitely", and that petitioner's claim was put forth as bearing upon the public policy of the State and as calling for a change in the decision. Motion for reargument was denied (264 N. Y. 595).

But if further authority were needed for the postulate that confiscation of private property without compensation is repugnant to the public policy of the State of New York, there is a wealth of decisions on the subject, many of them dealing specifically with the Russian confiscatory decrees:

In *Dougherty* v. *Equitable Life Assurance Soc.*, 266 N. Y. 71, at page 90, the Court said:

> "Recognition does not compel our courts to give effect to foreign laws if they are contrary to our public policy. Some writers have suggested that non-recognition was an insufficient reason for the refusal of our courts to enforce the laws of another country; rather, it should have been that those laws were contrary to our public policy."

See, also,

James & Co. v. *Russian Insurance Co.*, 247 N. Y. 262;
Petrogradsky M. K. Bank v. *National City Bank*, 253 N. Y. 23;
Matter of People (*Russian Re-Insurance Co.*), 255 N. Y. 415;
Russian Re-Insurance Co. v. *Stoddard*, 240 N. Y. 149;
Sokoloff v. *National City Bank*, 239 N. Y. 158;
James & Co. v. *Second Russian Insurance Co.*, 239 N. Y. 248.

The New York doctrine has always been the same. Nearly 100 years ago, in 1852, a slave holder, a resident of Virginia, where slavery was lawful, was passing through New York with 8 Negro slaves. A writ of habeas corpus to obtain their freedom was sued out and was sustained. *Lemmon* v. *People*, 20 N. Y. 562. The Court said:

> "Instead, therefore, of recognizing or extending any law of comity towards a slave holder passing through her territory with his slaves, she (the State of New York) refuses to recognize or extend such comity, or allow the law of the sovereignty which sustains the relation of master and slave to be administered as a part of the law of the State."

And the Court also stated at pages 608-9:

> "But where the laws of the several States differ, a citizen of one State asserting rights in an-

> other, must claim them according to the laws of the last mentioned State, not according to those which obtain in his own."

Cited in *Flash* v. *Conn*, 109 U. S. 371, at 377.

In *F. A. Strauss & Co.* v. *Canadian Pacific R.R. Co.*, 254 N. Y. 407, there was a shipment from a British port to a British port, under the British flag, and the bill of lading stated that the contract should be construed according to the law of Great Britain, but the Court stated at page 414:

> "As a general rule the validity of a contract is determined by the law of the jurisdiction where made, and if legal there, is generally enforceable anywhere. There is, however, a well established exception to the rule, to the effect that a Court will not enforce a contract, though valid where made, if its enforcement is contrary to the policy of the forum."

The sanctity of public policy is jealously defended by the New York Courts. The recent case of *Holzer* v. *Deutsche Reichsbahn Gesellschaft*, 159 Misc. 830, is in point. In that case a Jewish citizen of Germany brought suit against defendants for damages for breach of an employment contract made in Germany. Defendants (German citizens also) admitted that the sole ground of the discharge of the plaintiff, was plaintiff's race and religion, but pleaded as a defense to the action that such discharge was required under the law of Germany. The Court stated at page 839:

> "Suppose the German law declared forfeited to the German government all property of German Jews, wherever the property be situated. A Jew in Germany has securities in a New York vault. Would the courts of New York aid the German government in enforcing the German law, and order

> the securities of the German Jew delivered to the German government?
>
> "To ask these questions is to answer them."

and at page 840:

> "We do not go out of our path to manifest disrespect for a foreign government. We are not sitting in judgment on the acts of the German government; we are dispensing justice according to our own public policy. Such is the recognized exception to the rule *loci contractus.*"

It will be recalled that about a year ago the same issues as are present in the instant case were before this Court in the cases of *United States* v. *Bank of New York & Trust Company, United States* v. *President and Directors of the Manhattan Company, United States* v. *Pink,* as Superintendent of Insurance, when the government appealed from judgments dismissing its several complaints. All these cases were based on the same Litvinoff assignment and a similar confiscatory Soviet decree. This Court affirmed the dismissal on the ground that the State Courts had taken jurisdiction of the assets in all these cases and remitted the petitioner to those courts for any remedy it might have.

Thereafter, the petitioner went into the State courts in each of these cases.

In the *Bank of Manhattan* case, petitioner moved to terminate the proceedings pending under an assignment for the benefit of creditors, and to turn over the fund to it. The Court held that the relief could not be had by motion and remitted petitioner to an action (New York Law Journal, March 13th, 1936, Special Term, Part I, Supreme Court, New York County, McGeehan, *J.* Not reported in Official Reports). Petitioner thereupon brought an action on a complaint very similar to the complaint in the present action, and of course, predicated on the Litvinoff assignment and the decree of confiscation. The Court dis-

missed the complaint (New York Law Journal, Special Term, Part I, New York County, September 4th, 1936, not yet reported in official report). The Appellate Division unanimously affirmed (New York Law Journal, Appellate Division, First Department, January 30, 1937. Not yet reported in official reports).

In the *Pink* (*First Russian Insurance Co.*) case, petitioner made a motion for the termination of the Superintendent's liquidation proceedings and to acquire possession of the fund. Again the Court denied the motion and remitted the petitioner to an action (New York Law Journal, March 13th, 1936, Special Term, Part I, Supreme Court, New York County, McGeehan, *J.* Not reported in Official Reports). On appeal the order was affirmed by the Appellate Division (248 App. Div. 723) and leave to go to the Court of Appeals was denied in both the Appellate Division and the Court of Appeals (248 App. Div. 870). Petitioner has not yet begun the action.

In the *Bank of New York* case, petitioner moved to intervene in the proceeding then pending in the State Court. That motion was granted (New York Law Journal, March 13th, 1936, Special Term, Part I, Supreme Court, New York County, McGeehan, *J.* Not reported in Official Reports), and on intervention, petitioner's claim, which again of course, is based on the Litvinoff assignment and a decree of confiscation, was referred to James F. Donnelly, as Referee to hear and determine. The Referee over a period of months, took proof of the petitioner's claim, and heard a number of witnesses, including some specially brought from Soviet Russia, to testify on the question of Soviet Law. The Referee in a learned and exhaustive opinion dismissed the petitioner's claim.

The Referee decided that the property was located in New York.

He decided that the public policy of New York would apply.

He decided that the confiscatory decrees were in violation of New York public policy.

He decided that if the Federal public policy was applicable, it was to the same effect as the New York public policy, and after hearing the testimony, which, so far as we are able to find, is the first time that actual testimony has been offered by the petitioner in support of its claim, he found that the Soviet State had not itself legislated or intended that its confiscatory decrees should apply to property situated extra-territorially. He ends his opinion with these words:

> "But the case made out by the decrees themselves, the manner in which they were understood at home and interpreted at home and abroad, requires a finding that they were strictly territorial in effect and were so intended when enacted."

Legislative Expression.

But the public policy of New York is to be found not only in the decisions but in legislation as well.

The Legislature of the State in May of 1936, enacted Section 977-b of the Civil Practice Act, in which a complete and comprehensive scheme for the liquidation of assets in New York of nationalized corporations is set forth. Under it provision is made for the appointment of a Receiver of such assets, for the advertising and investigation of claims, for the payment of creditors and for the disposal of the surplus to stockholders or others who may be entitled thereto. The public policy of the state was crystalized and made definite in this Legislative enactment as follows, being sub-division 19 of Section 977-b of the Civil Practice Act:

> "Any receiver appointed pursuant to the provisions of this section may be substituted for such corporation in any action or proceeding pending in the courts of the state or of the United States to which such corporation is a party and may revive any action which shall have abated, and

such liquidation, dissolution, nationalization, expiration of its existence, or repeal, suspension, revocation, or annulment of its charter or organic law in the country of its domicile shall not be deemed to have any extra-territorial effect or validity as to the property, tangible or intangible, debts, demands, or choses in action of such corporation within the State or any debts or obligations owing to such corporation from persons, firms or corporations residing, sojourning or doing business in the state."

In view of all of the above, it may be said beyond cavil that the Russian confiscatory decrees are in violation of the public policy of the State of New York and will not be enforced in its courts.

Situs.

Petitioner, finding itself faced with the unsurmountable wall of authority in New York, seeks to flee the jurisdiction. The claim is made that the bank deposit in suit, which from its inception has always been actually located in a bank in New York, is legally located in Russia. The suggestion has at least the merit of novelty. The argument is that a bank deposit has two correlative elements, one, the obligation in the debtor to pay, the other, the right in the creditor to receive, and that the situs of the right to receive is located in the domicile of the creditor, therefore, the laws of the domicile of the creditor govern the right to receive.

True, there is in the creditor a right to receive, but it is a right to receive according to the laws and public policy of the debtor's domicile, where payment is to be made, where performance is to be had, and where the obligation is located.

The right to receive is subject, like all of the creditor's other assets, to a certain dominion by the sovereignty of his domicile. Thus the sovereignty of the domicile may tax the right to receive. It may prescribe its local devolution. What petitioner overlooks is, that though these

prescriptions of the domicile may have the force of law therein, they are not enforced in the jurisdiction of the debtor as a matter of right, but only as a matter of comity, and only when in accord with the latter's public policy. The laws of the creditor's domicile in respect to the right to receive have no more sanctity than any other of its legislative acts.

New York Court will not enforce the right if any step in its acquisition or conveyance, whether by contract or foreign legislation, violates its public policy or is shocking to its sense of justice and equity.

Petitioner's view of the law would lead to endless confusion. No debtor would ever know the extent of his obligation were he bound by whatever foreign law might be enacted in whatsoever jurisdiction the creditor might choose to dwell. The creditor's right to receive is to receive according to the law of the place of payment.

The law that bank deposits have their locality and situs at the place of the deposit and are governed by the law of that place and that such law has complete dominion over them is so well established, that it is difficult to believe that the petitioner can be serious in the argument that the situs of this deposit is in Russia.

There is a wealth of cases on the subject. The leading authorities have been cited and so thoroughly discussed in the brief of the respondents Belmont, pages 12 to 24, that the Court should not be burdened with further discussion of and quotation from them here.

One additional case, however, should be considered. The case is *Blackstone* v. *Miller*, 23 Supreme Court Reports 277. Though the case has been overruled as to taxing power of the states, so far as we find no one has questioned the reasoning of Judge Holmes on the point of the situs of a bank deposit for other purposes. This Court by Judge Holmes said:

> "What gives the debt validity? Nothing but the fact that the law of the place where the debtor

is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So, again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debt the rule still applied to slander that *actio personalis moritur cum persona*, and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations to one side, it is plain that the right of the foreign creditor would be gone.

"Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim *mobilia sequuntur personam* had no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way."

Situs of a right to receive is at best only a fiction which may be useful for limited purposes, such as taxation. It can not be permitted to override fact and well established law. Petitioner then piles Ossa on Pelion by adding to the fiction of the situs the doctrine of *mobilia sequuntur personam*. In other words, a fiction superimposed on a fiction. But even this second fiction will not hold because *mobilia sequuntur personam* has been created for and applies in the main only to decedent's estates.

This Court said in *Burnet* v. *Brooks*, 288 U. S. 378, at 391:

"It is insisted that the maxim *mobilia sequuntur personam* applies in this instance and that the situs

> of the property was at the domicile of the owner in France. But this Court has frequently declared that the maxim, a fiction at most, must yield to the facts and circumstances of cases which require it."

The New York Court of Appeals said in *Hutchinson v. Ross*, 262 N. Y. 381, at 388:

> "The maxim '*mobilia sequuntur personam*' cannot always be carried to its lgoical conclusion. Practical considerations often stand in the way. Physical presence in one jurisdiction is a fact, the maxim is only a juristic formula which cannot destroy the fact."

Though for specific purposes such as taxation, the right to receive may have a situs at the domicile of the creditor, the situs of the debt, for the purpose of the enforcement thereof, is determined according to the law of the domicile of the debtor, in other words, the place of payment. *Vladikavkazsky RR. Co.* v. *New York Trust Company, supra. Matter of Houdayer*, 150 N. Y. 37, *Zimmerman* v. *Southerland*, 274 U. S. 253, *Clark* v. *Williard*, 294 U. S. 211.

POINT II.

The public policy of the United States does not differ from that of New York.

Petitioner, apparently being turned out of New York and not sure of being admitted to Russia, also argues that if public policy is to be considered at all, it is Federal public policy and not the public policy of the State of New York which must prevail.

We submit, in view of the fact that the situs of the deposit in question is in New York and is governed by

New York law, that clearly New York public policy is the only public policy to be considered.

The Federal Courts may not be used to evade the public policy enforced by the State Courts, but as to matters governed by State Law, Federal Courts will apply the law and public policy of the state, and will not enforce a foreign law or one violative of the state public policy.

In *Moore* v. *Mitchell* (1928) 28 Fed. (2nd) 977, the Court said at page 998:

> "As a result of what has been said, I do not conceive it to be the duty of this court, notwithstanding the weight of insistence to the contrary, to undertake the enforcement, within the State of New York, of the revenue laws of Indiana. The course of procedure to be followed by a federal court, when asked to apply the law of a foreign state in a manner that is not permitted by the law of the state within which the court functions, is outlined in *Pennoyer* v. *Neff*, 95 U. S. 714, and *Parker* v. *Moore* (C. C. A.), 115 Fed. 799."

This case was affirmed in the Circuit Court of Appeals (30 Fed. [2nd] 600), concurring opinions being written by Judge Manton and Judge Hand. Judge Hand said (p. 604):

> "Even in the case of ordinary municipal liabilities, a court will not recognize those arising in a foreign state, if they run counter to the 'settled public policy' of its own. Thus a scrutiny of the liability is necessarily always in reserve, and the possibility that it will be found not to accord with the public policy of the domestic state."

This case was affirmed by the Supreme Court (281 U. S. 18). In the course of the opinion Mr. Justice Butler said (p. 23):

> "The United States District Court of New York exercises a jurisdiction that is independent of and under a sovereignty that is different from that of

> Indiana (*Grant* v. *Leach & Co.*, 280 U. S. 351; *Pennoyer* v. *Neff*, 95 U. S. 714, 732). And, so far as concerns petitioner's capacity to sue therein, that court is not to be distinguished from the courts of the State of New York (*Hale* v. *Allinson*, 188 U. S. 56, 68)."

In *Becker* v. *Interstate Business Men's Association*, 265 Fed. 508, the Circuit Court of Appeals was asked to enforce in Kansas an insurance contract which was admittedly contrary to the public policy of Kansas. The Court said (p. 510):

> "It is the public policy in force in Kansas, where this action was brought, which is to be sought (Citations); and this public policy, if not controlled by the Constitution, treaties, or laws of the United States, or by the principles of the commercial or mercantile law or of general jurisprudence, is governed by the laws of the state as disclosed by the constitution or statutes or by the decisions of its highest courts (*Hartford Ins. Co.* v. *Chicago, Milwaukee & St. Paul Railway Co.*, 175 U. S. 91)."

But if Federal public policy is the criterion, it does not differ on the points in issue from New York public policy. As the Court below said:

> "If the public policy of the United States is material, it would seem clearly adverse to a claim based on the Russian decree."

The authorities to the effect that confiscation is contrary to the constitution, law and public policy of the United States are legion. In *United States* v. *Perchman*, Chief Justice Marshall said:

> "The sense of justice and right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated and private rights annulled."

In *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481, the Court said:

> "As alien friends are embraced within the terms of the Fifth Amendment, it cannot be said that their property is subject to confiscation here because the property of our citizens may be confiscated in the alien's country. The provision that private property shall not be taken for private use without just compensation establishes a standard for our Government which the Constitution does not make dependent upon the standards of other governments."

The petitioner claims that the assignment was procured for the benefit of the United States government and its citizens having claims against the Soviet government (Petitioner's brief, p. 8) and that the public policy of the United States favors the settlement of the individual claims of its citizens, and that consequently the public policy of the United States accords with the right acquired under the assignment.

That is nothing less than saying that the end justifies the means, no matter how immoral the latter may be.

It may be conceded for the sake of argument, that the settlement of the claims of its citizens is not opposed to Federal public policy, but it certainly does not follow that any means taken to procure such settlement would not offend that very public policy. Granted that the Executive should attempt to secure a settlement of the claims of its government and its citizens, still that end must be attained only through moral means and those which do not violate American public policy beyond all question. Especially when the end is to be attained through the action of the Courts, the Executive may not rely upon means which shock the Courts and violate the very laws and public policy, which the Courts are instituted to maintain and defend. Even if we concede that the Executive may accept from foreign governments claims against American citizens the proceeds of which are to be applied to the

settlement of debts owing to other American citizens by the foreign government, if these claims depend upon a devolution of title which is otherwise invalid and unenforceable in our courts, obviously the claims do not become valid and enforceable merely because the proceeds thereof will be applied to debts owing American citizens.

To use an extreme illustration, suppose that the Executive had agreed as a step in the settlement of the claims of this government and its nationals, that each American creditor for each $1,000 of his claim should receive here and hold in slavery one Russian citizen—could it be gainsaid that though the settlement of the claims of American citizens was favored by public policy, that nevertheless, in this instance, public policy was violently offended because as a means to that end a human being was held in slavery?

Would any Federal Court uphold such an agreement?

So, in the case at bar, in order to accomplish the laudable end of settling American claims, the President has attempted to make an agreement which in view of our Courts is based upon a title no better than that of a receiver of stolen goods.

We refuse to believe that public policy of either the Federal or State governments can be stretched so far, even to the end of settling the claims of its citizens.

The books are full of cases showing that for 20 years multitudes of creditors, domestic and foreign, of the nationalized Russian corporations have been attempting to collect their debts out of the assets located here of their Russian debtor.

As we will show in our Point III, the last part of the Litvinoff assignment was inserted for the purpose of giving recognition and validity to the rights of these very creditors to reach such assets. These rights are priceless, constituting as they do in many cases, the only source from which collections of judgments may be had.

It certainly is not in accord with public policy to

despoil these American citizens of the means of satisfying their judgments in the endeavor to secure the settlement of the claims of other American citizens accruing out of confiscations in Russia.

Federal public policy is the last that should be invoked to sustain confiscation, and especially as a step in the settlement of its citizens' claims.

From its inception our government has insisted that there could be no confiscation of the private property of its nationals by a foreign power even within the latter's confines. 6 Moore's International Law Digest, Sec. 997.

In seeking to enforce the Litvinoff assignment in the United States Courts *by arguments of public policy* however, petitioner comes to a wholesale acceptance of the confiscatory decrees of Soviet Russia, and a negation of our established tradition of the inviolability of private property.

But in the process the United States may have dealt a mortal blow to the American private claims; for if the Court, at the instance of the United States government, declares it a part of American public policy that Soviet confiscatory decrees may take away the property located here out of which one set of American citizens may satisfy their judgments, we cannot conceive the possibility of the United States ever extracting from Soviet Russia an admission of liability because the Soviets took away the property of another set of American citizens there.

No other country has urged in its own courts Soviet public policy as its own public policy.

Public policy is not the pliable concept that petitioner would have it. Public policy does, within limits, change with the times; but certain fundamentals of national policy survive all changes short of social revolution. These fundamentals "establish a standard for our Government which the Constitution does not make dependent upon the standards of other governments" (*Russian Volunteer*

Fleet v. *United States*, 282 U. S. 481, 492). The confiscation of property without compensation remains repugnant to our scheme of things. The fiat of an executive officer cannot unsettle premises imbedded in our social order. Petitioner would have us believe that the whole question is merely one of foreign relations.

Only confusion is wrought by thinking of the problem as one in foreign relations. The question of the recognition of Russia is, of course, a matter both federal and executive. The disposition of private rights within the jurisdiction of a Court of New York is a matter neither federal nor executive.

POINT III.

Properly construed, the Litvinoff assignment excludes the deposit in question.

This follows:

(a) From the language of the instrument itself; and

(b) From the background of law and facts existing when the assignment was made.

(A)

The Language of the Instrument.

To uphold the construction contended for by the United States an important part of the instrument must be held meaningless. The United States contends that the words "or otherwise" were used in order to include claims of Russian nationals against American nationals which had been confiscated by the Soviet Government. In effect, it says that the first part of the instrument should be construed as if it read as follows:

> "• • • the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new

> litigation for the amounts admitted to be due or which may be found to be due it, as the successor of prior Governments of Russia, *or as the successor, by confiscation, of Russian nationals in respect of property or rights, justiciable in American courts, in which such Russian nationals may have had an interest* • • • and does hereby assign such amounts to the Government of the United States • • •."

It will be observed that the italicied words exactly describe the class of rights to which the claim in the instant case belongs. If the words "or otherwise" embrace this class and if the claims in this class were intended to be assigned, why did the Soviet Government, in the very next paragraph of the letter, feel called upon to agree not to assert any ownership of such claims? Why did it feel called upon to say:

> "The Government of the Union of Soviet Socialist Republics *further* agrees, preparatory to the settlement referred to above not to make any claim with respect to:
>
> (a) judgments rendered *or that may be rendered* by American courts in so far as they relate to property, or rights or interests therein, in which the Union of Soviet Socialist Republics, *or its nationals may have had* or may claim to have *an interest.*" (Italics ours.)

Does one assign a chose in action and then agree not to lay claim to it? Does one convey land and not only warrant the title but agree not to attack the title? That would not be expected where the contracting parties are the humblest citizens. It is unthinkable where the contracting parties are the heads of mighty nations.

The conclusion seems inescapable that the claims referred to in the first paragraph of the letter, and thereby assigned to the United States and "the property, rights, or interests therein" of Russian nationals referred to in the paragraph marked (a) were not the same rights. But the rights referred to in paragraph (a) clearly include

the right which is the subject of this litigation, since it is a right in which a Russian national "may have had or may claim to have an interest". That right was not assigned to the United States Government.

(B)

The Background of Law and Fact Existing When the Assignment Was Made.

The history of the Russian revolution, including the confiscation of private property by the Soviet Government, was, in the year 1933, known throughout the civilized world. The controversy as to the extra-territorial effect to be given to the Russian confiscatory decrees had, for eighteen years, raged upon battle-fronts no less numerous than those of the World War. Educated men generally—the contracting parties here, certainly—knew the answer given by the courts of many lands to the question: Did the confiscatory decrees confer upon the Russian Government title to property not located within the boundaries of Russia?

that Switzerland had answered that question in the negative: *Wilbuschewitz* v. *Zurich* (1926), 53 Clunet 1110, 1113 (Trib. Fed) (1925-26), Ann. Dig. of Int. L. Cases 96 (before recognition);

that Denmark had answered it in the negative: *Council of Russian Orthodox Community in Copenhagen* v. *Legation of R. F. S. F. R.* (1925-26) Ann. Dig. of Int. Law Cases 24 (Supt. Ct. of Denmark) (after recognition);

that Germany had answered it in the negative: *Ginsberg* v. *Deutsche Bank* (1928), Juristiche Wochenschrift 1232, 1233 (Kammergericht, Berlin) (after recognition);

that France had answered it in the negative: *Etat Russe* v. *Ropit* (1925), 52 Clunet 391 (Trib. Comm. Marseille); (1926) 53 Clunet 667 (Cour d'Appel) (Translation in Hudson, Cases on Internal Law [1929] 137); (1928) 55 Clunet 674 (Cour de Cassation) (after recognition);

that Great Britain had answered it in the negative: *The Jupiter* (No. 3), 1927 P. 122 (aff'd Ct. of Appeal, 1927, P. 250 (after recognition);

that New York had answered it in the negative:

Vladikavkazsky Ry Co. v. *N. Y. Trust Co.*, 238 App. Div. 581 (before recognition);

Petrogradsky M. K. Bank v. *National City Bank*, 253 N. Y. 23 (before recognition);

Matter of People (*Russian Re-Insurance Co.*), 255 N. Y. 415 (before recognition);

James & Co. v. *Russia Insurance Co.*, 247 N. Y. 262 (before recognition);

Russian Re-Insurance Co. v. *Stoddard*, 240 N. Y. 149 (before recognition);

that the United States had answered it in the negative: *Second Russian Ins. Co.* v. *Miller*, 297 Fed. 404 (before recognition); *Lehigh Valley R. Co.* v. *State of Russia*, 21 F. (2) 396, 401 (before recognition);

and lastly, but not least important, Soviet Russia had itself answered it in the negative: R. S. F. S. R. *Circular No. 42*, sent to Soviet plenipotentiaries abroad; *Circular No. 194*, issued Sept. 20, 1923, by the Commissariat of Justice; *Circular No. 329*, issued August 23, 1925, by the People's Commissariat for Foreign Affairs; *decision No. 124*, of October 16, 1924, by the Third Department of the People's Commissariat of Justice*;

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*In Circular No. 194 it is stated:

"Proprietary rights of citizens of the R. S. F. S. R. enforcible outside the R. S. F. S. R. are governed by the laws of the country where they are to be enforced."

and in the Circular issued by the Soviet People's Commissariat for Foriegn Affairs, No. 42, it is stated:

"The Law on Property established by the decrees of the Russian Soviet Government does, therefore, determine only legal relations pertaining to property rights as arise on the territory of the R. S. F. S. R. Legal relations pertaining to property rights whereof the subject-matter is situated outside the territory of the R. S. F. R. and is not connected with such territory cannot be governed outside the territory of the R. S. F. S. R. by Russian Law and are—irrespective of the nationality of the persons entitled to such rights, be they even Russian Citizens—subject to the effects of Local Law."

These circulars were construed as Russian law by HILL, *J.*, in *The Jupiter*, P. (1927) 120, at 144. Affirmed, Court of Appeal, P. (1927) 250. Moreover,

and finally they must have known that there is no reported instance in which the Soviet Government has sought to assert, in the courts of other lands, title to claims such as the one under consideration here, and been successful.

With that background of knowledge, is it conceivable that, if the contracting parties had intended to include such claims in the assignment, they would not have specifically mentioned them (as they did the claim of the Russian Volunteer Fleet against the United States) and not have hidden the light of their intention under that bushel of ambiguity—the words "or otherwise"? Would they not at least have said that the claims assigned were those due the Union of Soviet Socialist Republics "as successor of prior Governments of Russia or of prior Russian corporations"? We think the answer must be that the words "or otherwise" were not meant to refer to such claims because the parties knew that title thereto was not claimed by the Soviet government and that such title, if claimed, would not be enforced outside of Russia.

What, then, was meant to be included under the words "or otherwise". Again history affords the answer. During the war and prior to the Bolshevik revolution the Imperial and Kerensky governments had financed vast

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in the latest declaration of the British courts on the subject, *In re Russian Bank for Foreign Trade*, Chancery Decisions, 1933, page 745, MAUGHAM, *J.*, at page 759 states:

> "As will be seen later, the Soviet Goverment does not itself assert that the nationalization decrees have an extra-territorial effect."

and then goes on to say at page 767:

> "The decrees in question could not according to our laws have the effect of extinguishing the debt, if locally situate here, or of transferring it to the Soviet Republic. This follows, I think from the decisions of HILL, *J.*, and the Court of Appeal in *The Jupiter*. It is interesting to note that the same view is taken by the R. S. F. S. R. itself in a circular dated April 12, 1922, and in a circular issued by the People's Commissariat of Justice to all District Courts dated September 26, 1923, which are set out in the elaborate judgment of HILL, *J.* above referred to. These circulars show that the Soviet Government does not regard the nationalizing decrees as having any extra-territorial effect even as against Russian citizens."

purchases of war supplies in this country (*Lewine* v. *Nat. City Bank,* 248 N. Y. 365). Many millions of dollars were on deposit in American banks to the credit of the Russian government or its nominees. Title to these funds clearly vested in the Soviet government as successor to the Imperial and Kerensky governments. But there were other funds as to which the Soviet title was not so direct. For example, moneys standing to the credit of the Vladikavkazsky Railway Company, which, it was claimed, had actually been furnished by the Russian government and hence might be claimed by it. Again, it will be recalled that after the downfall of the Kerensky Government, before the Soviets consolidated their position and brought under their control the territory which they have since dominated, there was a period during which various local and independent governments were set up, such as the Omsk All Russian Government, as to which the Court of Appeals of New York said:

> "It is a matter of common knowledge and the moving papers establish the fact that if the Omsk All Russian Government was at any time even a *de facto* government in the international sense, it was created as such with Admiral Kolchak at its head at Omsk in November, 1918, and recognized by General Seminoff and his force at Vladivostok, and thereafter driven out of all regional control by the Bolshevik government, not later than March, 1920.
>
> "During its ephemeral and disastrous career, it asserted its authority over a portion of the inhabitants of the former Russian Empire who had, after the debacle, separated themselves from the central government and established an independent sovereign government over a limited territory in Siberian Russia. *It was not a subordinate state nor a civil division of the Soviet Republic*" (*Nankivel* v. *Omsk All Russian Government,* 237 N. Y. 150, at 156). (Italics ours.)

Of course, the Soviets would not want to recognize such pretended governments as these in the sense in which they were willing to acknowledge the Imperial and Kerensky Governments, as "prior" governments. Yet they would not be content to waive claim to any assets the pretended governments might have here. To give such meaning to the words "or otherwise" is but to read them in the light of history. To give them such meaning as the petitioner would give them is to shut our eyes to history.

POINT IV.

Assuming, without conceding, that the president had the power to accept from a foreign government claims against an American citizen, he did not have the power by the mere acceptance of a claim to breathe into it life which it otherwise would not have.

Throughout its brief the United States refers to the exchange of letters between the President and M. Litvinoff as an "executive agreement" (See pp. 2, 3, 33, 51, etc.). Such, of course, it was. This executive agreement has never been ratified by the Senate, nor has force been given it by any act of Congress. In so far as the "agreement" constituted the diplomatic recognition of the Soviet government, no one questions the President's power to make it and to make it without the authority of or concurrence by Congress or either of its branches. But what of the President's power, without the concurrence of Congress, to accept, on behalf of the United States an assignment of claims of a foreign government against American citizens, *otherwise unenforceable by the as-*

signor, and to agree to account to the foreign government for collections made?*

It is apparently conceded by the petitioner that the bank deposit in this case could not have been collected by the Russian government itself. Its contention seems to be that the act of the President alone breathed life into this comatose body. It contends that a claim, which the Russian government could not enforce because contrary to public policy, becomes enforceable and entirely in line with public policy, by the mere act of the President in accepting the assignment.

But the President has no power to instil into foreign legislation authority which it did not possess *proprio vigore*. This has heretofore been the view of the Executive Department itself:

In 1883 the Canadian Parliament authorized the erection of a bridge across Niagara River, work not to begin "until an act of the Congress of the United States of America has been passed, consenting to or approving the bridging of said river, or until the Executive of the United States has consented to and thereof approved". The President asked the Attorney General for his opinion as to the President's power in the premises. The Attorney General replied (17 Opp. Atty.-Gen., 523):

> "The President can perform no act *officially* except it be authorized by the Constitution and laws.

*It is a matter of grave doubt whether the President under any circumstances, has the power, without the sanction of Congress, to accept and enforce any claim of a foreign government against an American citizen. Certainly, there is no express authority for such power to be found in either the Constitution or the statutes. It does not by its nature attach to the functions of the Executive as a necessary power. It cannot be justified by precedent. We have combed the archives of the State Department from the founding of the government to the present day, and we find, among 96 executive agreements negotiated by the President relating to claims, one, and only one in which the President undertook to deal with a claim of a foreign government against an American citizen. That claim was a *counter-claim*, and the agreement was careful to recite that it was made *with the consent* of the citizen and his attorney (*United States* v. *Guatemala*. Protocol of Agreement submitting to arbitration the claim of Robert H. May against Guatemala and the claim of Guatemala against said May. Signed at Washington, February 23, 1900, Text: Treaty Series 150; Malloy, Treaties I: 871-873.)

His consent in the present case, not being thus authorized, would be an extra official act.

"I beg to refer, in this connection, to an opinion of Attorney-General Cushing, in a case in which a similar question arose. A legislative act of a British colony provided for certain proceedings for the arrest and punishment of deserting seamen of any foreign nation, where the government of such nation or state had by its proper officer signified its desire that the act might be enforced against the crews or ships belonging to such nation or state. The inquiry was, whether the President of the United States, as such, had authority, by so signifying his desire. to give general effect to that act. It was held that he had not. *'Neither the Constitution of the United Etates, nor the treaties between this Government and that of the United Kingdom, nor any acts of Congress (observes Mr. Cushing) empower the President to communicate to the law of a foreign state authority or effect, which it does not possess proprio vigore as a law of such foreign state.* • • • Suffice it now to say, that, in my judgment, the Government of the United States can give express sanction to the law before me in no other way, in the first instance, save through a treaty or an act of Congress.' (6 Opin. 209.)

"On grounds already intimated, I am of opinion that the President can not with propriety grant the application of the Bridge Company." (Italics ours.)

Would this opinion have been different if the consent had been a "rider" tacked on to a diplomatic recognition of the Government of Canada? The answer would seem obvious. The President has no power to validate claims and causes of action against American citizens, theretofore unenforceable, and in that way harass them and deplete their assets.

The petitioner, citing *U. S.* v. *Curtiss Wright Export Corp.* No. 98, decided by this Court December 21st, 1936, seems to assume that because a question of foreign rela-

tions is involved, the President's powers are unlimited. But the President's power even in the field of foreign relations is prescribed. As the Court said in *United States* v. *Western Union Telegraph Co.*, 272 Fed. 311 (aff'd 272 Fed. 893 and reversed by consent in 260 U. S. 754), where the President sought, by executive order to prevent the laying of a cable between Cuba and Miami, Florida, at page 313:

> "If the President has the original power sought to be exercised, it must be found expressly, or by implication, in the Constitution. It is not sufficient to say that he must have it because the United Sates is a sovereign nation and must be deemed to have all customary national powers. *Knox* v. *Lee*, 12 *Wall.* 457, 20 L. Ed. 287. However true this may be, it does not follow that the Executive has the necessary authority."
>
> • • • • • •
>
> "The implications of the power contended for by the government are very great. If the President has the right, without any legislative sanction to prevent the landing of cables, why has he not the right to prevent the importation of opium on the ground that it is a deleterious drug, or the importation of silk or steel because such importation may tend to reduce wages in this country or injure the national welfare? In the same way, why does not the President, in the absence of any act of Congress, have the right to refuse to admit foreigners to our shores, and to deport those aliens whose presence he regards as a public menace?"

We look in vain for any statute which confers upon the President the power to accept assignments of claims of the kind here involved. We look in vain for any provision of the Constitution which confers upon him such a power. True the Constitution confers upon him the power "to receive ambassadors and ministers". But does this mean that he can attach to such reception conditions which vitally affect *and materially change* the

private rights of American citizens? That such rights were here affected and were here changed, if the petitioner's claim is upheld, is obvious. The moment before the letters were exchanged, Russia had a claim against Belmont growing out of the confiscation which could not have been enforced, because to do so would violate the public policy of New York and of the United States. The moment after the exchange, the United States stepped into the shoes of Russia, the public policy of the United States on this was reversed and became fixed (because, according to petitioner, "the Executive has declared in favor of the enforceability of the right herein asserted", Petitioner's brief, p. 34), and the unenforceable claim against the American citizen became enforceable. We confidently assert that no such power resides in the President.

Conclusion.

The claim of the petitioner herein, based on the confiscatory decrees of Russia and the Litvinoff assignment, have now been before the courts many times. The United States District Court, the Circuit Court of Appeals, the Supreme Court of the State of New York and the Appellate Division of that Court have all dismissed the complaint on the merits A learned Referee has dismissed the complaint after hearing all the proof that the petitioner could adduce in support of its contentions. The reasons for this overwhelming preponderance of judicial opinion are apparent.

We are confident that this Court will not sustain a claim masked behind a series of fictions which outrage the facts, and predicated upon a confiscatory decree which has been described by the highest court of the State of New York as "*brutum fulmen*" and as "shocking to our sense of justice and equity".

POINT V.

The judgment and order of the District Court dismissing the Second Amended Complaint and of the Circuit Court of Appeals in affirmance thereof were correct, and should now be affirmed.

Respectfully submitted,

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Attorney for John R. Crews,
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Amicus Curiae.

SAMSON SELIG,
JOSEPH DAY LEE,
Of Counsel.

MAR 4
CHARLES ELMOR

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 532

UNITED STATES OF AMERICA
Petitioner

v.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

BRIEF *AMICUS CURIAE* ON BEHALF OF PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY

ROBERT J. SYKES
Attorney for President and Directors of the Manhattan Company, amicus curiae

ROBERT J. SYKES
WILLIAM C. MORRIS
Of Counsel

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 532

UNITED STATES OF AMERICA,

Petitioner,

against

MORGAN BELMONT and ELEANOR R. BELMONT, as Executors of the Last Will and Testament of August Belmont, Deceased,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY AS *AMICUS CURIAE*

Statement

This brief is submitted upon the written consent of the parties to this appeal filed with the Clerk of the Court.

The President and Directors of the Manhattan Company have a vital interest in the substantive issues raised by the appeal herein. The Bank holds funds formerly belonging to the Northern Insurance Company of Moscow, as assignee for the benefit of creditors. These funds the United States of America is seeking to recover in an

action instituted in the Supreme Court of the State of New York.

Before commencing the action in the State Court, the Government had instituted a suit on August 25, 1934, in the Federal Court seeking possession of the assets. A motion was made on behalf of the President and Directors of the Manhattan Company to dismiss the complaint for failure to state a cause of action. District Judge Coxe rendered an opinion dismissing the complaint upon the merits, *United States* v. *President and Directors of the Manhattan Co.*, 10 Fed. Supp. 269. The Circuit Court of Appeals affirmed the decree of Judge Coxe but upon the ground that the Federal Court had no jurisdiction of the action in view of the prior *quasi in rem* proceeding for the adjudication of creditors' rights pending in the State Court. (22 Fed. (2nd) 866, 881.) The Supreme Court of the United States affirmed the ruling of the Circuit Court in an opinion rendered by Chief Justice Hughes (296 U. S. 463) and recommended that the United States proceed in the New York Supreme Court for a determination of its rights.

A consideration which is absent from the record in the present case should be noted with reference to the case brought by the United States against President and Directors of the Manhattan Company. There are creditors in the latter case pursuing a statutory remedy, who are claiming adversely to the Government. This Court should point out that well established precedents support the proposition that where creditors are pursuing their remedies in New York State the title of one claiming through a foreign transferee will not be enforced, particularly when the law and policy of the State have provided a rule of transfer different from that of the owners domicile. To hold otherwise would deprive creditors of vested rights.

Questions Presented

1. Whether Soviet legislation could effectively transfer title to a bank deposit in the State of New York.

2. Whether a right derived under the penal law of a foreign State will be enforced by our Courts.

3. Whether the public policy renders it impossible to accept as valid a transfer under the confiscatory decree.

4. Whether the language of the Litvinoff letter included the deposit in question.

Facts

Prior to 1918 the Petrograd Metal Works deposited with the private bank of August Belmont & Co., a sum of money (R. 3). In 1918 the corporate structure of the Russian corporation was shattered by a decree of the Russian Socialist Federated Soviet Republic (R. 4, 7). This decree dissolved and terminated the Metal Works, and the Russian State seized and appropriated for its own benefit all the corporation's property and rights. No compensation was made to the former owners of the corporation, creditors or stockholders (R. 4).

In November, 1933, the Union of Soviet Socialist Republics assigned to the United States all amounts admitted to be due or that might be found to be due to the said Russian Government as the successor of prior Governments of Russia from American nationals. The complaint alleges that this included the deposit with Belmont & Co.

August Belmont died in 1924. The defendants are the duly appointed representatives of his estate.

Summary of Argument

I

Courts deny effect to transfers by confiscatory laws with respect to property situated outside the territorial jurisdiction of those laws.

Debts or choses in action are generally found to be situated in the country where they are properly recoverable or can be enforced.

Where a bank is located in the State of New York, that sovereignty has control over amounts on deposit. For practical purposes the situs of the debt is in that State.

If the debt be regarded as having no situs the transfer of the deposit must be characterized as being ancillary to the transaction which gave rise to the debt and be governed by the law of the State of New York which is the proper law of the transaction.

Attributing to the transfer of a debt to a third person a proper law of its own is the least satisfactory method of characterization.

II

The Courts of one country will not enforce the penal laws of another.

The substance of the right sought to be enforced by the plaintiff will directly involve the execution of penal laws of the Russian Socialist Federated Soviet Republic.

III

Legislation nationalizing without compensation to formers owners, banking corporations and other industries is confiscatory in character and contrary to our public policy. This public policy will be enforced, to prevent the

transfer of property here to one claiming title under confiscatory decrees.

It is not sufficient for a right to have been duly acquired on the territory of a foreign state to be capable of automatic enforcement.

The case is not unseldom when the exception of public order has been employed and the adoption of foreign legislation refused.

IV

Since the sovereign parties are dealing in private causes of action, the Litvinoff assignment must be strictly construed.

An interpretation of the correspondence compels one to conclude that a fund of the character held by the Bank was not embraced therein.

POINT I

Soviet legislation could not effectively transfer title to a bank deposit in the State of New York.

The title of the United States is based upon a double transfer, *i. e.*, the Soviet decree and the Litvinoff assignment. To support the title of its assignor, derived under penal and confiscatory legislation, the United States relies upon the fiction *mobilia sequuntur personam,* and the proposition that a decree of confiscation is equivalent to a voluntary assignment. If practical considerations, logic and the policy of the State conflict with the fiction compelling it to give way and if the effect of confiscation is misconceived, the Government must fail.

No case in this country has been found raising the specific problem concerning the transfer or assignment of a bank deposit.

The best approach to the problem is found in *The Canadian Bar Review*, Ottawa, May 1935, pages 265 through 278:

> "The question of the transfer, *inter vivos* of the debt or chose in action, however, is in a state of doubt or confusion in English Conflict of Laws (1927, I. K. B. 699). The nature of the problem may be clarified if we begin by distinguishing clearly between (a) the transaction which gives rise to the debt and (b) the transaction by which the debt is transferred from the creditor to a third person. The validity of the creditor's claim against the debtor and generally the rights and obligations of creditor and debtor *inter se* are governed by the ordinary principles of conflict of laws applicable to transaction (a), that is, in the case of a contract, by the proper law of the contract. The selection of the proper law relating to transaction (b) is more difficult and depends on the way in which transaction (b) is characterized in relation to transaction (a). Three modes of characterization suggest themselves:
>
> (1) The debt arising out of transaction (a) might be characterized as a movable thing having a situs of its own, and transaction (b) might be characterized as being sufficiently analogous to the transfer of a tangible movable to justify the application of the ordinary rule that the lex rei sitae governs the transfer of the thing; and the proper law of transaction (a) would be immaterial.
>
> (2) Transaction (b) might be characterized as being merely incidental or ancillary to transaction (a) with the result that the transfer of the debt would be governed by whatever is the proper law of the transaction which gives rise to the debt; and the situs of the debt, so far as it has a situs at all, would be immaterial.

(3) Transaction (b) might be characterized as being analogous to a contract, or at least as having a proper law of its own ascertained in a way similar to that in which the proper law of a contract is ascertained, without regard to situs, if any, of the debt and without regard to the proper law of transaction (a).

The first mode of characterization is attractively simple. It results in the application of a single law (the lex situs of the debt) to the validity of one transfer or several transfers, no matter where or by whom it or they may be made, and in particular avoids any problem of priorities as between transfers made in different countries. If it should happen that the debtors' obligation under transaction (a) is governed by some law other than the lex situs of the debt, he is of course still entitled to avail himself of the proper law of transaction (a) as regards the nature of the obligation, and in any action against him to recover the debt he is of course entitled to avail himself of the rules of procedure of the forum. As a general rule the place of action would be the same as the situs of the debt.

The second mode of characterization has some advantages (51 L. Q. R. 76, at p. 85, 1935). It avoids any problem of priorities as between two or more transfers because, as in the case of the first characterization, both or all the transfers are governed by a single law. It avoids any possible conflict between the rights and obligations of the creditor and debtor *inter se* on the one hand, and the rights of the transferee or transferees on the other hand, because they are both governed by the proper law of the transaction which gives rise to the debt.

The third mode of characterizing transaction (b), namely, attributing to the transaction of a debt a proper law of its own, would seem to be least satisfactory. It may make applicable to the trans-

> fer of a debt a law different from the proper law of the transaction which gives rise to the debt, and it involves all the usual problems which arise in connection with contract, such as those relating to capacity, formal validity and intrinsic validity. It raises also a difficulty. That there may be two or more transfers of the same debt in different countries, and that each transfer may be valid by its own proper law, and may be entitled to priority by that law."

A

Under the first mode of characterization, we must attribute a situs to the debt. In most instances the situation of property does not admit of doubt. The difficulty arises in affixing to debts or choses in action a proper situs. Such intangible property may be held to be situate at the place where it can be effectively dealt with. Debts or choses in action are generally to be looked upon as situate in the country where they are properly recoverable or can be enforced.

The property in dispute being a bank deposit had a situs at the place where the deposit was payable.

It is of no consequence whether the funds on deposit with the New York bank are tangible or intangible.

> "Thus the deposits are clearly intangible property within the state. Over this intangible property the state has the same dominion that it has over tangible property."
>
> *Security Savings Bank* v. *California*, 263 U. S. 282, 285.

> "The Fourteenth Amendment did not, in guaranteeing due process of law, abridge the jurisdiction which a State possessed over property within its borders, regardless of the residence or presence of the owner. That jurisdiction extends alike to

> tangible and to intangible property. Indebtedness due from a resident to a non-resident—of which bank deposits are an example—is property within the State. Chicago, Rock Island & Pacific Ry. Co. *v.* Sturm, 174 U. S. 710. It is, indeed, the species of property which courts of the States have most frequently applied in satisfaction of the obligations of absent debtors. Harris *v.* Balk, 198 U. S. 215."
>
> *Pennington* v. *Fourth National Bank,* 243 U. S. 269, 271.

Under the law of New York where the property here in question was deposited, the localization of a bank account at that point is clearly recognized. *Bluebird Undergarment Co.* v. *Gomez,* 139 Misc. 742, which followed *Richardson* v. *National Bank of India,* 43 T. L. R. 631.

> "Conceding that the deposit was a debt, conceding that it was intangible, still it was property in this State for all practical purposes • • • the fund has a situs here because it is subject to our laws."
>
> *In Matter of Houdayer,* 150 N. Y. 37, 40, 41.

The State can always exercise through its Courts jurisdiction over such intangible things as are localized within its borders. The debt in question was localized within the State of New York. Russian law with respect to it is inoperative.

> "For the rule, as we conceive, is well settled that an assignment by virtue of or under foreign law does not operate upon a debt, or right of action, as against a person in this state."
>
> *Hibernia National Bank* v. *Lacombe, et al.,* 84 N. Y. 367, 384.

In *40 Harvard Law Review,* 1926, 1927, page 991, it was said:

> "In determining what law governs the assignment of a bank account a court is faced with a preliminary question as to the nature of an assignment. Is an assignment the creation of a power to collect the debt coupled with a contract not to revoke, or is it a transfer of ownership, that is, a conveyance of the debt? If the former be the accurate description, then the law that governs the validity of contracts, should, of course, govern the assignment. If, on the other hand, an assignment be a conveyance of ownership, will the assignment of a bank account fall within the rule that determines the governing law for the conveyance of chattels? Or is the sounder analysis to assimilate it to the assignment of an ordinary debt and then permit the law of the place of assignment to govern?
>
> Whatever be the nature of an assignment historically, it is now difficult to deny that it is more than a contractual obligation between assignor and assignee. There is a transfer of ownership; whether it be legal or equitable is immaterial for the purpose of conflict of laws. Consequently, it would seem that the rule governing conveyances is logically to be preferred to the rule governing contracts. But that rule, as already indicated, predicates its result upon situs. And unless we are to reason from a metaphor, a bank deposit, representing most of its legal aspects a contractual obligation of the bank to pay, can have no situs."
>
> Yet there is doubtless a factual difference between a bank account and an ordinary debt. The bank's books and investments are subject to close scrutiny, supervision by the state wherein it operates; the deposit may be claimed upon demand usually at a single established place, and as the maintenance of a reserve is normally required, the

expectancy of repayment is higher than in the case of an ordinary debt. Perhaps the most impressive yielding to reality has come in the series of cases that have declined to invalidate legislation providing for the escheat to the state of local bank deposits of non-resident depositors. It is submitted that the rationale of these cases lies not in any hypostatization of the bank's obligation to pay, but in the question—what state controls the obligation as reasonably to justify the application of its law to the obligation? From such a premise the conclusion might well follow that the assignment of a bank account is governed by the law of the State where the bank is. Certainly this result is functionally the most desirable. The scope of a bank's discretion as to the use of depositary funds is narrowly prescribed by statute, and its duty of caution is stringent. Advice as to the validity of claims presented to the bank will be most reliable if counsel may be guided by those tests of legality that they know best, and not be obliged to discover first, the place where the assignment was made or the domicile of the assignor, and the second the assignment law of either or both of those places. To the particular assignor-depositor and his assignee, on the contrary, the perplexity of place is easily solved and the second inconvenience is considerably more than balanced by the facility with which the bank, free from doubts, will make payment upon the assignment."

In England a debt has its situs where it is payable. In *Russian Bank for Foreign Trade* (1933), Ch. Div. 745, 767, the Court said:

"If the debt was primarily recoverable in London, I am of opinion that it was not affected by the Soviet legislation, even though it was due to a person who was a Russian subject at the date of the nationalization decrees. Its locality must

> be taken to be the place where the debt was in the ordinary course recoverable. • • • The decrees in question could not according to our laws have the effect of extinguishing the debt, if locally situate here, or of transferring it to the Soviet Republic. • • • Moreover, it is evident that our courts have never entertained the view that a debt incurred here by a foreign corporation permitted to carry on business here under the English law can be discharged by a foreign Statute."

In *Sedgwick Collins & Co., Ltd.* v. *Rossia Insurance Company of Petrograd* (1925), 1 K. B. (C. A.) 1, 41 T. L. R. 663, the Court of Appeals, per Sargent, L. J., stated at page 666:

> "Nor do I think that the position of creditors here as against property of the Rossia Insurance Company here, such as debts owing to them from debtors in this country, is altered by legislation or decrees of the Russian sovereign power which 'nationalized' the undertaking and assets of the Rossia Insurance Company; that is, as I understand it, purported to transfer these assets from their private proprietors to the Russian nation as a whole. Effective as such legislation may be within the limits of Russian territory, it cannot determine the ownership of property locally situate in this country such as debts owing from debtors here. See Dicey, Conflict of Laws, 2nd Ed., p. 310 and Lecouturier and Others *v.* Rey (26 The Times L. R. 368; (1910) A. C. 262); an analogous case with reference to the goodwill of, a trade-mark or trade-name in England."

In the case of *In Re Russian Bank for Foreign Trade, supra*, Maugham, J., stated:

> "It is interesting to note that the same view is taken by the R. S. F. S. R. itself in a circular dated

> April 12, 1922, and in a circular issued by the People's Commissariat of Justice to all District Courts dated September 26, 1923, which are set out in the elaborate judgment of Hill, J., above referred to. These circulars show that the Soviet Government does not regard the nationalizing decrees as having any extra-territorial effect even as against Russian citizens."

In the case of *Republica de Guatemala* v. *Nunez* (1927), 1 K. B. 669, upon which the Government relies, the Court treated the debt as having a situs in England despite the fact that the case was decided upon another ground.

The United States relies upon the doctrine of *mobilia sequuntur personam.* In this country *mobilia sequuntur personam* is a governing rule in the case of succession *ab intestato,* disposition by will and marriage settlements. The cases in this country cited by the Government on situs state the limitation imposed by the Supreme Court of the United States upon the exercise of jurisdiction to tax by the various States.

> "No case has extended the principle by which the taxing power of the State has been limited to impose similar restrictions upon the exercise by the State of jurisdiction for any other purpose." (Conflict of Laws, Section 50, special note.)

This doctrine is one of convenience and yields to other considerations.

> *Helvering* v. *Stockholms Enskilda Bank,* 293 U. S. 84, 92;
>
> *Safe Deposit & Trust Co.* v. *Virginia,* 280 U. S. 83, 93.

The tax is not imposed upon the property passing at death, but an excise imposed upon the right to succession.

The movables in such circumstance only appear as an accessory of the person. But where the intangible property has no intimate relation with the person of the owner, for example, where a matter of priority is involved, or process of garnishment, or a prohibition forbidding export or confiscation, then no title can be transferred except in compliance with the law of the place where the property is situated.

It is claimed that the situs of the property was with the creditor in Russia since his right to collect the debt followed him there, and that the acquisition thereof must be governed by Soviet law. In other words, that a transfer valid according to the law of the domicile of the owner and in conformity with the laws of the place where made (in this case the same) is valid everywhere.

We submit that since the authorities recognize the principle that the law of the place where the movables are actually found must be applied, the fiction relied upon by the Government must give place to the fact. If we disregard theoretical speculations concerning the whereabouts of the debt, it is clear that the transfer must depend upon the law of New York. The rule recognized and applied in garnishment and attachment cases should be preferred to the theory advanced in the tax cases. *Harris* v. *Balk*, 198 U. S. 215, 222; *Chicago, Rock Island Railway Co.* v. *Sturm*, 174 U. S. 710.

Those classes of cases that have declined to invalidate legislation providing for the escheat to the State of bank deposits of non-resident depositors apply a real rather than artificial rule. *Pennington* v. *Fourth National Bank*, 243 U. S. 269; *Security Bank* v. *California*, 263 U. S. 282, 285.

Certainly confiscation, if comparison is possible, more closely resembles attachment than it does taxation. In

the case of taxation the persons liable for the tax are deemed compensated by the governmental protection such as the police system or by general benefits such as public schools, hospitals and similar services. There was no pecuniary return from the forced exaction of the decree.

What could the debtors of the Metal Company attach or levy upon in Russia to satisfy their claims? Nothing—certainly the fiction of *mobilia sequuntur personam* would not aid them in that jurisdiction with regard to *in rem* proceedings. *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394.

Assume that the Government was not in the picture and that creditors of the company through operation of law had succeeded by virtue of their claims to title to this, the only property. *People* v. *National Trust Co.*, 82 N. Y. 283, 287; *Shayne* v. *Evening Post*, 168 N. Y. 70; *People* v. *O'Brien*, 111 N. Y. 1. Then, according to the Government, we have as many varying sitae as there are creditors of the company. It would then be necessary to look at the contract which created the debt, or at least to where it was recoverable.

What gives the debt validity? The law of the place where the debtor is and which will compel him to pay. The Metal Company was subject to this law whether it invoked it or not, just as respectable citizens are governed by the criminal law whether or not they commit crimes.

What enables the debtor to collect the debt? This same law, the law of New York. If New York should enact legislation (similar to the recent statutes abolishing actions for seduction, breach of promise to marry and criminal conversation) decreeing that all debts hereafter contracted in New York and payable thereafter should be extinguished by either parties' death, it is clear that the right of any foreign assignee or one claiming through him would be lost.

Great reliance is placed on *Republica de Guatemala* v. *Nunez* by the Government. In that case the learned Justices were considering a voluntary assignment and not a transfer by virtue of a confiscatory decree. The learned Justices admitted that a debt due from a London Bank had its situs in England. The issue in that case depended not only upon the law applicable to an assignment, but also upon the law governing the capacity of an infant, Nunez. On the first proposition the assignment to Nunez was treated as a contract to assign which is supported by one authority—and the *lex loci contractus* was applied. This doctrine is unsound. On the latter question the capacity of Nunez—the assignment taking place outside the situs of the debt—was ascertained by the *lex actus* and *lex domicili* which are the same.

No artificial extension of Russian law can be applied to domestic transactions. The debt has a situs here and its transfer must be governed by the law of the State of New York.

Being intangible property within this State, its transfer must be governed by our laws.

Since it is only the acts performed in its own territory with reference to property there that can be validated by the retroactive effect of recognition, the decree which nationalized the Metal Company has no effect in the United States.

Baglin v. *Cusenier*, 221 U. S. 580;

Second Russian Insurance Co. v. *Miller*, 268 U. S. 552; 297 Fed. 404;

Lehigh Valley R. Co. v. *State of Russia*, 21 Fed. (2nd) 396;

James & Co. v. *Second Russian Insurance Co.*, 239 N. Y. 248;

Hamilton v. *Accessory Transit Co.*, 26 Barb. 46;
Huntington v. *Attrill*, 146 U. S. 657;
Oscanyan v. *Arms Co.*, 103 U. S. 261;
The Apollon, 9 Wheat. 362.

In *Baglin* v. *Cusenier, supra,* this Court, speaking through the present Chief Justice, stated at page 596:

> "We are not concerned with their authority under the French law to conduct this business, but it is not the business to which the trademarks in this country relate. That business is being conducted according to the ancient process by the Monks themselves. The French Law cannot be conceived to have any extra-territorial effect to detach the trade-marks in this country from the product of the Monks, which they are still manufacturing."

In *Vladikavkazsky Ry. Co.* v. *New York Trust Company*, 263 N. Y. 369, the New York Court of Appeals considered the effect of Soviet decrees after recognition. The plaintiff in that case brought an action to recover a deposit of funds in the New York office of the defendant banking institution. It was argued by the defendant company that the Russian railway company was dissolved by the ukase or legislation of the Soviets, and that in view of this Country's recognition of the Soviet government, the courts of New York were bound to enforce the decree of confiscation and dissolution as a matter of comity. In the course of its opinion the Court stated, in rejecting this contention (p. 378):

> "It is hardly necessary to state that the arbitrary dissolution of a corporation, the confiscation of its assets and the repudiation of its obligations by decrees, is contrary to our public policy and shocking to our sense of justice and equity. That

the confiscation decree in question, clearly contrary to our public policy was enacted by a government recognized by us, affords no controlling reason why it should be enforced in our courts." Baglin *v.* Cusenier, 221 U. S. 580.

"We enforce the same principle even in regard to statutes of sister States. Barth *v.* Backus, 140 N. Y. 230, 239.

"The fact that the present Russian government was not recognized was not the basis of our refusal to give effect to its decrees nationalizing corporations and confiscating their property. During the period when those decisions were made, we recognized and enforced 'mere ordinary legislation' relating to 'every day transactions of business or domestic life.' (Petrogradsky M. K. Bank *v.* National City Bank, supra; Matter of People (First Russian Ins. Co.), 255 N. Y. 428, 432.)

"Prior to recognition we clearly intimated that our decision would have been the same if at the time recognition had been granted. (James & Co. *v.* Second Russian Insurance Company, 239 N. Y. 248, 257.)"

The Supreme Court of the United States, in *United States* v. *Juan Percheman*, 7 Peters 51, 86, stated:

"It may not be unworthy of remark, that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled."

If the public policy of the United States is material, it would seem clearly adverse to the present claim based on

the Russian decree. Confiscation of property within the United States is precluded by the Fifth Amendment to the Constitution. *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481, 491.

It is inconceivable that, while prohibiting an act, the Constitution should tolerate its indirect performance, or its consequences.

The Russian legislation authorizing a transfer by confiscation must yield to the law and policy of the State of New York where the property is actually located. Since the latter jurisdiction has provided a rule of transfer requiring just compensation to the former owners of property, a title based on any other principle will not be recognized. Any other construction would make the provision of our Constitution a mere ineffectual formality. It would be an exceptional case where our courts would permit a foreign government to legislate with respect to property and things within the borders of the United States in contravention of our express statutory rules.

It follows therefore that the only transfer of property which could be effective here is one carried out according to the law of the State of New York. Since the transfer as attempted was not in accordance with what was required by law, it was ineffectual to vest any title in the Soviet government, and it "can require no argument to show that the transfer of any claim to the United States cannot give to it any greater validity than it possessed in the hands of the assignor." *United States* v. *Buford*, 3 Peters, 12, 30.

B

The second mode of characterization is the most preferable. The situs is then immaterial. The proper law of the transaction which gives rise to the debt is New York

law. *Zimmerman* v. *Sutherland,* 274 U. S. 253; *Sokoloff* v. *National City Bank,* 239 N. Y. 158, 169; *Vladikavkazsky Ry. Co.* v. *New York Trust Co.,* 263 N. Y. 369, 378; *Severnoe Security Corporation* v. *London and Lancashire Insurance Company,* 255 N. Y. 120, 124.

In *Ogden* v. *Saunders,* 12 Wheat. 213, the Court stated:

> "What is it, then, which constitutes the obligation of a contract? The answer is given by the Chief Justice, in the case of Sturgis *v.* Crowinshield, to which I readily assent now, as I did then; it is the law which binds the parties to perform their agreement. The law, then, which has the binding obligation, must govern and control the contract in every shape in which it is intended to bear upon it, whether it affect its validity, construction or discharge. • • • It is then the municipal law of the State, whether that be written or unwritten which is emphatically the law of the contract made within the State, and must govern it throughout, wherever its performance is sought to be enforced.
>
> It forms in my humble opinion, a part of the contract, and travels with it wherever the parties to it may be found. • • •"

The alleged assignment must be considered as merely ancillary to the contract which created the debt and is governed by the law in force in the State of New York. We have pointed out heretofore that the decrees in question are contrary to our public policy and shocking to our sense of justice and equity.

C

The third mode of characterization is the least satisfactory and is the one adopted by the Government in this case. It was adopted by the English Court in *Republica de Guatemala* v. *Nunez.* If such rule is applied in this case, it makes applicable to the transfer a law different

from the law in the State of New York where the debt arose. It may create a number of problems concerning capacity and validity. In the event of a double transfer of the same debt in different states, each transfer may be valid by the law in force in the state where the assignment was made one entitled to priority by such law. Even if the Court adopts this method, the Government may not recover.

Confiscation is not analogous to a voluntary assignment. It is not even analogous to a bankruptcy proceeding.

In *James & Co.* v. *Second Russian Insurance Company, supra,* Judge Cardozo, stated, page 257:

> "The decree invoked by the defendant is not in any true sense a decree of bankruptcy, though even if it were, there would be limits to its extra-territorial validity. A decree of bankruptcy presupposes a distribution of the assets for the benefit of creditors, and this decree is one of confiscation, appropriating the assets for the benefit of the Soviet republic."

The Soviet government does not resemble a universal successor. It did not succeed to the rights of the corporation, but it shattered the corporation and attempted to create new rights.

Assuming that the Soviet Government be regarded as an assignee it does not follow that it became such by virtue of a voluntary contract made with the assignor. A distinction is recognized in our law between a transferee whose rights are acquired by voluntary assignment and one whose rights are acquired by operation of law.

In *Cole* v. *Cunningham,* 133 U. S. 107, the Supreme Court said:

> "It is certain that the laws of common domicile cannot overcome such registry and other positive

laws of the other country as are distinctly politic and coercive. (Wharton on Conflict of Laws, 369, 371) If a State provides that no title shall pass to property within its borders, except on certain conditions, such provision cannot be overriden by the law of any other State, which parties domiciled there may be held to have been adopted. • • •

Again, although, in some of the States the fact that the assignee claims under a decree of a court or by virtue of the law of the State of the domicil of the debtor and the attaching creditor, and not under a conveyance by the insolvent is regarded as immaterial, yet, in most, the distinction between involuntary transfers of property, such as work by operation of law as Foreign Bankrupt and Insolvent Laws, and a voluntary conveyance, is recognized. The reason for the distinction is that a voluntary transfer, if valid where made, ought generally to be valid everywhere, being the exercise of the personal right of the owner to dispose of his own, while an assignment by operation of law has no legal operation out of the State in which the law was passed. This is a reason which applies to citizens of the actual situs of the property when that is elsewhere than at the domicil of the insolvent, and the controversy has chiefly been as to whether property so situated can pass even by voluntary conveyance."

To the same effect are all authorities.

Security Trust Co. v. *Dodd Mead & Co.*, 173 U. S. 624, 629;

Matter of Accounting of Waite, 99 N. Y. 433;

Barnett v. *Kinney*, 147 U. S. 476;

Black v. *Zacharie*, 3 How. U. S. 483;

Barth v. *Backus*, 140 N. Y. 230;

Warner v. *Jaffray*, 96 N. Y. 248;

Osgood, et al. v. *Maguire*, 61 N. Y. 524, 529;

Willitts v. *Waite*, 25 N. Y. 586;

Hibernia National Bank v. *Lacombe*, 84 N. Y. 367, 385;
Keller, et al. v. *Paine*, 107 N. Y. 83, 89;
Hervey, et al. v. *R. I. Locomotive Works*, 93 U. S. 664;
Dearing v. *McKinnon Dash & Hardware Co.*, 165 N. Y. 78, 87.

In the case against the President and Directors of the Manhattan Company as Assignee for the benefit of creditors of the Northern Insurance Company of Moscow, creditors' rights were acquired before the intervention of the alleged universal successor. The government cannot defeat their rights and must yield "to the mandate of the sovereignty that has the physical control of what he would reduce to his possession". *Clark* v. *Williard*, 294 U. S. 211.

If the Soviet decrees have any force here it is only by virtue of comity, but comity has no place where the legislation offends the public policy of this forum.

In the present case such decrees will not be enforced because the judiciary of the State of New York has declared by repeated decisions that it is against our public policy to enforce them. The State of New York has by legislative enactment stated that these decrees shall have no extra-territorial effect or validity as to property including debts within such State and has provided a method for distribution to creditors. Laws of 1936, Chapter 917, Section 977-B, New York Civil Practice Act.

The Russian State could not transfer any rights to the United States since its legislation transgressed upon the territorial limits of its sovereignty. In any event our courts will not enforce a right otherwise duly acquired under the foreign law where the enforcement of such right is inconsistent with the policy of law in force in the United States.

POINT II

Our courts will not enforce the Penal Laws of a foreign state.

In the recent case of *Banco De Vizcaya* v. *Don Alfonso* (1934), 151 L. T. R. 499, the English Court considered the effect of a confiscatory decree of a Spanish Government purporting to confiscate the security of a Spanish bank held by it in England. The Court said at pages 500, through 501:

> "In my judgment, the substance of the right sought to be enforced by the plaintiffs is the delivery to them of the securities in question and the enforcement of this right will directly or indirectly involve the execution of what are undoubtedly and admittedly penal laws of the Spanish Republic. The plaintiffs' whole case is that they are bound by virtue of the decrees to hand over the securities of the Spanish Government in defiance of the mandate of the defendant, and, that being so, it seems to me unarguable that the enforcement of the plaintiffs' right will directly or indirectly involve the execution of the decrees. It was contended on behalf of the plaintiffs that, though the decrees may be penal, the plaintiffs' claim is not a penal action; because they are not asserting the right of the Spanish Government but their own contractual right to the securities as against the Westminster Bank. I am unable to accept this contention.
>
> The plaintiffs are not asserting their contractual rights as they originally existed but as altered by the decrees of the Spanish Republic. Nor are they in substance asserting their own rights at all, but the rights of the Spanish Republic."

The Soviet confiscatory decrees are penal in character and irrespective of the situs of the debt or chose in action are unenforcible here.

In *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265, the Court said at page 291:

> "The rule that the Courts of no country execute the law of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue or other municipal laws, and to all judgments for such penalties."

The doctrine finds support in the following cases:

Huntington v. *Attrill*, 146 U. S. 657;
Louks v. *Standard Oil Co.*, 224 N. Y. 99;
Oklahoma v. *Gulf, Colorado & Santa Fe Ry. Co.*, 220 U. S. 290;
Baglin v. *Cusenier Co.*, 221 U. S. 580, 596.

POINT III

The public policy in this country renders it impossible to accept as valid a transfer under confiscatory decrees.

The Soviet decrees dissolving the Russian corporation, appropriating its assets and terminating all the rights of creditors and stockholders was shocking to our sense of justice and contrary to our public policy. Every Court which has examined these decrees has held them to be an affront to justice and of no extra-territorial effect.

Russian Reinsurance Company v. *Stoddard*, 240 N. Y. 149;

James & Co. v. *Second Russian Insurance Company*, 239 N. Y. 248, 255;

Petrogradsky M. K. Bank v. *National City Bank*, 253 N. Y. 23;

Vladikavkazsky Ry. Co. v. *N. Y. Trust Co.*, 263 N. Y. 369;

The Jupiter, 43 T. L. R. 210;

Employer's Liability, 1926, 1 K. B. L. affirmed House of Lords, 1927, A. C. 95;

Etat Russe v. *Ropit* (1925, 52 Clunet 391), 1928, 55 Clunet 674;

Ginsberg v. *Deutsche Bank* (1928), Justice Wochenschrift 1232, 1233, Kammergericht, Berlin;

Council of Russian Orthodox Community in Copenhagen v. *Legation of R. S. F. S. R.* (1925-26 Ann. Dig. of Int. Law Cases 24, Sup. Ct. Denmark).

"The public policy of the government is to be found in the constitution and the laws and the course of administration and decisions."

St. Louis Mining Co. v. *Montana Mining Co.*, 171 U. S. 650.

It is unreasonable to contend therefore that the executive department by the acceptance of the assignment has declared the public policy of this country and in connection with this has stripped the courts of their power to interpret it.

"The construction of treaties is the peculiar province of the judiciary; and, except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself."

Jones v. *Meehan*, 175 U. S. 1.

The transfer as attempted was not in accordance with what was required by our law, and was ineffectual to vest any title in the United States.

POINT IV

The language of the Litvinoff letter does not include the funds in question.

This point was discussed at length in the brief of the respondents and it is not necessary to deal at length with it here.

We submit, however, that the assignment to the United States was not made by the foreign sovereignty dissolving the corporation, or by the State which took title to the assets of the dissolved corporation. The Government of the Union of Soviet Socialist Republics assigned to the United States "the amounts admitted to be due or that may be found to be due it as the successor of prior governments of Russia or otherwise." The United States does not claim the amounts sued for are due the Union as the successor of any prior government of Russia but relies on the words, by confiscation and appropriation. The assignment of the amounts due is made by the Union of Soviet Socialist Republics. The decree which purported to dissolve and nationalize the Russian corporation was enacted by the Russian Socialist Federated Soviet Republic.

Even if the Government's argument to the effect that upon dissolution the assets of the corporation shall pass to the person designated by statute and give the right to such person, wherever situated, there is nothing in the record showing that this person is the assignor.

The Russian Socialist Federated Soviet Republic is but one of a number of member states which compose the

Union. Assuming that the property passed to the Russian Socialist Federated Soviet Republic by virtue of the decrees, we have no allegation or evidence in the record which shows that the Russian Socialist Federated Soviet Republic transferred its right to the Union of Soviet Socialist Republics so that the latter in turn could make an assignment to the United States. Until the United States cures this defect, it has no standing in our Courts.

Conclusion

Each state has a right to declare a policy of law which is to govern in its jurisdiction. The recognition of a foreign government does not alter the principles established in such forum, particularly when they have been in force for a number of years. When the public policy of the forum is against confiscatory legislation international comity has no place. The effect of the system which the Court is invited to adopt, would lead substantially to the foreign domination of American property.

The decision of the Court below should be affirmed.

Respectfully submitted,

ROBERT J. SYKES,
Attorney for President and Directors of the Manhattan Company, successor to the Bank of Manhattan Trust Company, amicus curiae.

ROBERT J. SYKES,
WILLIAM C. MORRIS,
Of Counsel.

No. 532

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

UNITED STATES OF AMERICA,

Petitioner,

AGAINST

MORGAN BELMONT and ELEANOR R. BELMONT, as executors of the Last Will and Testament of August Belmont, deceased,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR DAY-GORMLEY LEATHER COMPANY, AS AMICUS CURIAE

BORRIS M. KOMAR,
Counsel for Day-Gormley Leather Company, as Amicus Curiae.

JEFFREY PRESS, INC., N. Y. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 532.

UNITED STATES OF AMERICA,

Petitioner,

against

MORGAN BELMONT and ELEANOR R. BELMONT, as executors of the Last Will and Testament of August Belmont, deceased,

Respondents.

Brief for Day-Gormley Leather Company, as Amicus Curiae.

Statement.

This brief is filed with the consent of all the parties to this appeal.

Day-Gormley Leather Company is a Massachusetts corporation. It has an appeal now pending in the United States Circuit Court of Appeals for the Second Circuit against the National City Bank of New York in an action involving sums deposited by said Day-Gormley Leather Company with the former Petrograd branch of said bank. One of the principal defenses of the bank in said action is the reliance upon the confiscatory decrees of the Soviet Government arbitrarily appropriating defendant's Russian funds alleged to include the plaintiff's deposit.

The Question Considered.

The sole question involved upon this appeal is whether or not our Courts should enforce the penal and confiscatory statutes of the Soviet Government. It is approached both from the standpoint of international law and the public policy of the United States.

The Brief.

In the appeals recently heard by this Honorable Court in which the United States of America was petitioner and Bank of New York & Trust Company, President and Directors of the Manhattan Company and Louis H. Pink were respective respondents (October Term, 1935, Nos. 195, 196 and 197), a brief was filed by this counsel discussing only the question of the legal effect here of Russian confiscatory decrees. Except for the decision in this case by the United States Circuit Court of Appeals for the Second Circuit, no new cases were decided and no new authorities were found.

The above appeals involved, besides said question, the question of the jurisdiction of the Federal Courts. This Honorable Court decided said appeals upon the sole question of jurisdiction (296 U. S. 463).

To avoid the reprinting of an identical brief, this Honorable Court is respectfully referred to the brief amicus curiae filed in Nos. 195, 196 and 197 for October Term, 1935.

Respectfully submitted,

BORRIS M. KOMAR,
Counsel for Day-Gormley Leather Company, as Amicus Curiae.

SUPREME COURT OF THE UNITED STATES.

No. 532.—October Term, 1936.

The United States of America, Petitioner, *vs.* Morgan Belmont and Eleanor R. Belmont, as Executors of the Last Will and Testament of August Belmont, Deceased.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 3, 1937.]

Mr. Justice Sutherland delivered the opinion of the Court.

This is an action at law brought by petitioner against respondents in a federal district court to recover a sum of money deposited by a Russian corporation (Petrograd Metal Works) with August Belmont, a private banker doing business in New York City under the name of August Belmont & Co. August Belmont died in 1924; and respondents are the duly-appointed executors of his will. A motion to dismiss the complaint for failure to state facts sufficient to constitute a cause of action was sustained by the district court, and its judgment was affirmed by the court below. 85 F. (2d) 542. The facts alleged, so far as necessary to be stated, follow.

The corporation had deposited with Belmont, prior to 1918, the sum of money which petitioner seeks to recover. In 1918, the Soviet Government duly enacted a decree by which it dissolved, terminated and liquidated the corporation (together with others), and nationalized and appropriated all of its property and assets of every kind and wherever situated, including the deposit account with Belmont. As a result, the deposit became the property of the Soviet Government, and so remained until November 16, 1933, at which time the Soviet Government released and assigned to petitioner all amounts due to that government from American nationals, including the deposit account of the corporation with Belmont. Respondents failed and refused to pay the amount upon demand duly made by petitioner.

The assignment was effected by an exchange of diplomatic correspondence between the Soviet Government and the United States. The purpose was to bring about a final settlement of the claims and counterclaims between the Soviet Government and the United States; and it was agreed that the Soviet Government would take no steps to enforce claims against American nationals; but all such claims were released and assigned to the United States, with the understanding that the Soviet Government was to be duly notified of all amounts realized by the United States from such release and assignment. The assignment and requirement for notice are parts of the larger plan to bring about a settlement of the rival claims of the high contracting parties. The continuing and definite interest of the Soviet Government in the collection of assigned claims is evident; and the case, therefore, presents a question of public concern, the determination of which well might involve the good faith of the United States in the eyes of a foreign government. The court below held that the assignment thus effected embraced the claim here in question; and with that we agree.

That court, however, took the view that the situs of the bank deposit was within the State of New York; that in no sense could it be regarded as an intangible property right within Soviet territory; and that the nationalization decree, if enforced, would put into effect an act of confiscation. And it held that a judgment for the United States could not be had, because, in view of that result, it would be contrary to the controlling public policy of the State of New York. The further contention is made by respondents that the public policy of the United States would likewise be infringed by such a judgment. The two questions thus presented are the only ones necessary to be considered.

First. We do not pause to inquire whether in fact there was any policy of the State of New York to be infringed, since we are of opinion that no state policy can prevail against the international compact here involved.

This court has held, *Underhill* v. *Hernandez*, 168 U. S. 250, that every sovereign state must recognize the independence of every other sovereign state; and that the courts of one will not sit in judgment upon the acts of the government of another, done within its own territory.

That general principle was applied in *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, to a case where an action in replevin had been brought in a New Jersey state court to recover a consignment of hides purchased in Mexico from General Villa. The title of the purchaser was assailed on the ground that Villa had confiscated the hides. Villa, it appeared, had seized the hides while conducting independent operations under the Carranza government, which at the time of the seizure had made much progress in its revolution in Mexico. The government of the United States, after the trial of the case in the state court, had recognized the government of Carranza, first as the *de facto* government of the Republic of Mexico, and later as the government *de jure*. This court held that the conduct of foreign relations was committed by the Constitution to the political departments of the government, and the propriety of what may be done in the exercise of this political power was not subject to judicial inquiry or decision; that who is the sovereign of a territory is not a judicial question, but one the determination of which by the political departments conclusively binds the courts; and that recognition by these departments is retroactive and validates all actions and conduct of the government so recognized from the commencement of its existence. "The principle", we said, p. 303, "that the conduct of one independent government cannot be successfully questioned in the courts of another is as applicable to a case involving the title to property brought within the custody of a court, such as we have here, as it was held to be to the cases cited, in which claims for damages were based upon acts done in a foreign country, for it rests at last upon the highest considerations of international comity and expediency. To permit the validity of the acts of one sovereign State to be reexamined and perhaps condemned by the courts of another would very certainly 'imperil the amicable relations between governments and vex the peace of nations.'" *Ricaud* v. *American Metal Co.*, 246 U. S. 304, 308-309, 310, is to the same effect.

In *A. M. Luther* v. *James Sagor & Co.*, L. R. [1921] 3 K. B. 532, the English Court of Appeal expressly approved and followed our decision in the *Oetjen* case. The English case involved that part of the same decree of the Soviet Government here under consideration which declared certain private woodworking establishments to be the property of the Republic. Under that decree the Gov-

ernment seized plaintiff's factory in Russia together with a stock of wood therein. Agents of the Republic sold a quantity of the stock so seized to the defendants, who imported it into England. Thereafter, the British Government recognized the Soviet Government as the *de facto* government of Russia. Upon these facts, the court held that, the British Government having thus recognized the Soviet Government, existing at a date before the decree in question, the validity of that decree and the sale of the wood to the defendants could not be impugned, and gave judgment for defendants accordingly. The court regarded the decree as one of confiscation, but was unable to see (Bankes, L. J., p. 546) how the courts could treat the decree "otherwise than as the expression by the de facto government of a civilized country of a policy which it considered to be in the best interest of that country. It must be quite immaterial for present purposes that the same views are not entertained by the Government of this country, are repudiated by the vast majority of its citizens, and are not recognized by our laws." Lord Justice Scrutton, in his opinion, discusses (pp. 557-559) the contention that the courts should refuse to recognize the decree and the titles derived under it as confiscatory and unjust, and concludes that the question is one not for the judges but for the action of the sovereign through his ministers. "I do not feel able", he said, "to come to the conclusion that the legislation of a state recognized by my Sovereign as an independent sovereign state is so contrary to moral principle that the judges ought not to recognize it. The responsibility for recognition or non-recognition with the consequences of each rests on the political advisers of the Sovereign and not on the judges." Further citation of authority seems unnecessary.

We take judicial notice of the fact that coincident with the assignment set forth in the complaint, the President recognized the Soviet Government, and normal diplomatic relations were established between that government and the Government of the United States, followed by an exchange of ambassadors. The effect of this was to validate, so far as this country is concerned, all acts of the Soviet Government here involved from the commencement of its existence. The recognition, establishment of diplomatic relations, the assignment, and agreements with respect thereto, were all

parts of one transaction, resulting in an international compact between the two governments. That the negotiations, acceptance of the assignment and agreements and understandings in respect thereof were within the competence of the President may not be doubted. Governmental power over internal affairs is distributed between the national government and the several states. Governmental power over external affairs is not distributed, but is vested exclusively in the national government. And in respect of what was done here, the Executive had authority to speak as the sole organ of that government. The assignment and the agreements in connection therewith did not, as in the case of treaties, as that term is used in the treaty making clause of the Constitution (Art. II, § 2), require the advice and consent of the Senate.

A treaty signifies "a compact made between two or more independent nations with a view to the public welfare." *Altman & Co.* v. *United States*, 224 U. S. 583, 600. But an international compact, as this was, is not always a treaty which requires the participation of the Senate. There are many such compacts, of which a protocol, a modus vivendi, a postal convention, and agreements like that now under consideration are illustrations. See 5 Moore, Int. Law Digest, 210-221. The distinction was pointed out by this court in the *Altman* case, *supra*, which arose under § 3 of the Tariff Act of 1897, authorizing the President to conclude commercial agreements with foreign countries in certain specified matters. We held that although this might not be a treaty requiring ratification by the Senate, it was a compact negotiated and proclaimed under the authority of the President, and as such was a "treaty" within the meaning of the Circuit Court of Appeals Act, the construction of which might be reviewed upon direct appeal to this court.

Plainly, the external powers of the United States are to be exercised without regard to state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning. Mr. Madison, in the Virginia Convention, said that if a treaty does not supersede existing state laws, as far as they contravene its operation, the treaty would be ineffective. "To counteract it by the supremacy of the state laws, would bring on the Union the just charge of national perfidy, and involve us in war." 3 Elliot's Debates 515. And see *Ware* v. *Hylton*, 3 Dall. 199, 236-237. And

while this rule in respect of treaties is established by the express language of cl. 2, Art. VI, of the Constitution, the same rule would result in the case of all international compacts and agreements from the very fact that complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states. Compare *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 316, *et seq.* In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes the State of New York does not exist. Within the field of its powers, whatever the United States rightfully undertakes, it necessarily has warrant to consummate. And when judicial authority is invoked in aid of such consummation, state constitutions, state laws, and state policies are irrelevant to the inquiry and decision. It is inconceivable that any of them can be interposed as an obstacle to the effective operation of a federal constitutional power. Cf. *Missouri* v. *Holland*, 252 U. S. 416; *Asakura* v. *Seattle*, 265 U. S. 332, 341.

Second. The public policy of the United States relied upon as a bar to the action is that declared by the Constitution, namely, that private property shall not be taken without just compensation. But the answer is that our Constitution, laws and policies have no extraterritorial operation, unless in respect of our own citizens. Compare *United States* v. *Curtiss-Wright Export Corp.*, *supra*, at p. 318. What another country has done in the way of taking over property of its nationals, and especially of its corporations, is not a matter for judicial consideration here. Such nationals must look to their own government for any redress to which they may be entitled. So far as the record shows, only the rights of the Russian corporation have been affected by what has been done; and it will be time enough to consider the rights of our nationals when, if ever, by proper judicial proceeding, it shall be made to appear that they are so affected as to entitle them to judicial relief. The substantive right to the moneys, as now disclosed, became vested in the Soviet Government as the successor to the corporation; and this right that government has passed to the United States. It does not appear that respondents have any interest in the matter beyond that of a custodian. Thus far no question under the Fifth Amendment is involved.

It results that the complaint states a cause of action and that the judgment of the court below to the contrary is erroneous. In so holding, we deal only with the case as now presented and with the parties now before us. We do not consider the status of adverse claims, if there be any, of others not parties to this action. And nothing we have said is to be construed as foreclosing the assertion of any such claim to the fund involved, by intervention or other appropriate proceeding. We decide only that the complaint alleges facts sufficient to constitute a cause of action against the respondents.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 532.—October Term, 1936.

United States of America, Petitioner,
vs.
Morgan Belmont and Eleanor R. Belmont, as Executors of the Last Will and Testament of August Belmont, deceased.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[May 3, 1937.]

Mr. Justice Stone.

I agree with the result, but I am unable to follow the path by which it is reached. Upon the record before us there is, I think, no question of re-examining the validity of acts of a foreign state, and no question of the United States' declaring and enforcing a policy inconsistent with one that the State of New York might otherwise adopt in conformity to its own laws and the Constitution.

The United States, by agreement with the Soviet government, has acquired an assignment of all the rights of the latter in a chose in action, against an American citizen, formerly belonging to a Russian national, and confiscated by decree of the Soviet government. If the subject of the transfer were a chattel belonging to an American, but located in Russia, we may assume that the validity of the seizure would be recognized here, *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Ricaud* v. *American Metal Co.*, 246 U. S. 304, 308-310; *Sqlimoff & Co.* v. *Standard Oil Co.*, 262 N. Y. 220. Similarly, the confiscation of the present claim, being lawful where made, is upon familiar principles to be regarded as effective in New York, except in so far as that state, by reason of the presence of the debtor there, may adopt and enforce a policy based upon non-recognition of the transfer.

But this Court has often recognized that a state may refuse to give effect to a transfer, made elsewhere, of property which is within its own territorial limits, if the transfer is in conflict with its public policy. *Green* v. *Van Buskirk*, 5 Wall. 307, 311-312; *Hervey* v.

R. I. Locomotive Works, 93 U. S. 664; *Security Trust Co* v. *Dodd*, 173 U. S. 624; *Clark* v. *Williard*, 292 U. S. 112, 122; *Clark* v. *Williard*, 294 U. S. 211. It is likewise free to disregard the transfer where the subject of it is a chose in action due from a debtor within the state to a foreign creditor, especially where, as in the present case, the debtor's only obligation is to pay within the state, on demand. *Harrison* v. *Sterry*, 5 Cranch 289; *Disconto Gesellschaft* v. *Umbreit*, 208 U. S. 570; *Barth* v. *Backus*, 140 N. Y. 230; *Vladikavkazsky Ry. Co.* v. *New York Trust Co.*, 263 N. Y. 369, 378-379. The chose in action is so far within the control of the state as to be regarded as located there for many purposes. *Wyman* v. *Halstead*, 109 U. S. 654, 656; *Chi., R. I. & P. Ry. Co.* v. *Sturm*, 174 U. S. 710; *Harris* v. *Balk*, 198 U. S. 215; *Pennington* v. *Fourth National Bank*, 243 U. S. 270; *Security Savings Bank* v. *California*, 263 U. S. 282, 285; *Corn Exchange Bank* v. *Coler*, 280 U. S. 218; *In re Russian Bank for Foreign Trade*, L. R. 1933, Ch. Div. 745, 767; American Law Institute, Restatement, Conflict of Laws, §§ 108, 213.

It does not appear that the State of New York, at least since our diplomatic recognition of the Soviet government, has any policy which would permit a New York debtor to question the title of that government to a claim of the creditor acquired by its confiscatory decree, and no reason is apparent for assuming that such is its policy. Payment of the debt to the United States as transferee will discharge the debtor and impose on him no burden which he did not undertake when he assumed the position of debtor. Beyond this he has no interest for the state to protect. But it is a recognized rule that a state may rightly refuse to give effect to external transfers of property within its borders so far as they would operate to exclude creditors suing in its courts. *Harrison* v. *Sterry*, *supra*; *Security Trust Co.* v. *Dodd*, *supra*; *Disconto Gesellschaft* v. *Umbreit*, *supra*; *Clark* v. *Williard*, *supra*; *Barth* v. *Backus*, *supra*.

We recently held, in *Clark* v. *Williard*, *supra*, that the full faith and credit clause does not preclude the attachment of property within the state, by a local creditor of a foreign corporation, all of whose property has been previously transferred, in the state of its incorporation, to a statutory successor for the benefit of creditors. Due process under the Fifth Amendment, the benefits of which extend to alien friends, as well as to citizens, *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481, does not require any different re-

sult. *Disconto Gesellschaft* v. *Umbreit, supra*, 579, 580. The Constitution has no different application where the property transferred is a chose in action, later seized by a creditor in the state of the debtor. *Disconto Gesellschaft* v. *Umbreit, supra*. See *Harrison* v. *Sterry, supra*. In conformity to this doctrine, New York would have been free to enforce a local policy, subordinating the Soviet government, as the successor of its national, to local suitors. Its judicial decisions indicate that such may be its policy for the protection of creditors or others claiming an interest in the sum due. *James & Co.* v. *Second Russian Insurance Co.*, 239 N. Y. 248, 257; *Matter of People* (City Equity Fire Insurance Co.), 238 N. Y. 147, 152; *Matter of Waite*, 99 N. Y. 433, 448. See *Vladikavkazsky Ry. Co.* v. *New York Trust Co., supra*.

It seems plain that, so far as now appears, the United States does not stand in any better position with respect to the assigned claim than did its assignor, or any other transferee of the Soviet government. We may, for present purposes, assume that the United States, by treaty with a foreign government with respect to a subject in which the foreign government has some interest or concern, could alter the policy which a state might otherwise adopt. It is unnecessary to consider whether the present agreement between the two governments can rightly be given the same effect as a treaty within this rule, for neither the allegations of the bill of complaint, nor the diplomatic exchanges, suggest that the United States has either recognized or declared that any state policy is to be overridden.

So far as now relevant, the document signed by the Soviet government, as preparatory to a more general settlement of claims and counterclaims between the two governments, assigns and releases to the United States all amounts "due or that may be found to be due it" from American nationals, and provides that the Soviet government is "to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment." The relevant portion of the document signed by the President is expressed in the following paragraph:

"I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due or that may be found to be due."

There is nothing in either document to suggest that the United

States was to acquire or exert any greater rights than its transferor, or that the President, by mere executive action, purported or intended to alter the laws and policy of any state in which the debtor of an assigned claim might reside, or that the United States, as assignee, is to do more than the Soviet government could have done after diplomatic recognition—that is, collect the claims in conformity with those laws. Cf. *Todok* v. *Union State Bank*, 281 U. S. 449.

As respondent debtor may not challenge the effect of the assignment to the United States, the judgment is rightly reversed. But as the reversal is without prejudice to the rights of any other parties to intervene, they should be left free to assert, by intervention or other appropriate procedure, such claims with respect to the amount due as are in accordance with the laws and policy of New York. There is no occasion to say anything now which can be taken to foreclose the assertion by such claimants of their rights under New York law.

Mr. Justice BRANDEIS and Mr. Justice CARDOZO concur in this opinion.